

STATE OF MICHIGAN  
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET  
PROCUREMENT  
P.O. BOX 30026, LANSING, MI 48909  
OR  
530 W. ALLEGAN, LANSING, MI 48933

**NOTICE  
OF  
CONTRACT NO. 071B3200020**  
between  
**THE STATE OF MICHIGAN**  
and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Emphasys Software 3890 Charlevoix Ave #370 Petoskey, MI 49770	Andrea Webb	<a href="mailto:awebb@emphasys.software.com">awebb@emphasys.software.com</a>
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(800) 968-6884 ext 3211	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:				
BUYER:	DTMB	Mark Lawrence	517-241-1640	<a href="mailto:lawrencem@michigan.gov">lawrencem@michigan.gov</a>

CONTRACT SUMMARY:			
DESCRIPTION: Descriptive Contract Title (Not always the same language as provided in MAIN)			
Elite Applicant and Partner Portals			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
5 years	October 24, 2012	October 23, 2017	2- 2 year options
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card	<input type="checkbox"/> Direct Voucher (DV)	<input type="checkbox"/> Other	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:			\$585,525.71

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MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:		\$585,525.71	

**THIS IS NOT AN ORDER:** This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #07112200165. Orders for delivery will be issued directly by the Department of Technology, Management & Budget through the issuance of a Purchase Order Form.

**Notice of Contract #: 071B3200020**

<b>FOR THE CONTRACTOR:</b>	<b>FOR THE STATE:</b>
<b>Emphasys Software</b>	
Firm Name	Signature
	<b>Greg Faremouth, IT Division Director</b>
Authorized Agent Signature	Name/Title
	<b>DTMB Procurement</b>
Authorized Agent (Print or Type)	Enter Name of Agency
Date	Date



**STATE OF MICHIGAN**  
**Department of Technology, Management and Budget**  
**Procurement**

Contract No. 071B3200020  
**Elite Applicant and Partner Portals**

Buyer Name: Mark Lawrence  
Telephone Number: 517 241-1640  
E-Mail Address: lawrencem1@michigan.gov



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## **Article 1 – Statement of Work (SOW)**

The purpose of this Contract is to maintain, update, and host the Emphasys Company Elite system for the administration of the MSHDA Housing Voucher Program.

### **1.000 Project Identification**

#### **1.001 PROJECT REQUEST**

The purpose of this contract is to implement maintain, enhance, and host the Contractor Software, Elite Applicant and Partner Portal and associated Modules listed below.

**The supplementary programs interface directly with the Elite software and are listed below.**

The two supplementary Modules provide the following:

- 1) A software program that will allow over 60,000 **applicants** to the Housing Choice Voucher Program to access their application information. They will need the ability to view their placement on the list along with their preferences, to update their income, family, and personal information including their mailing address, and to submit requests directly to MSHDA staff through a system e-mail address.
- 2) A software program that will allow over 20,000 **landlords** to access their account information. They will need the ability to update their account information, view their HAP registers, inspection information, and payment history. They will need the ability to submit requests directly to MSHDA staff through a system e-mail address.

#### **1.002 BACKGROUND**

The Michigan State Housing Development Authority (MSHDA) is the 43-year-old state authority that has as its mission to provide financial and technical assistance through public and private partnerships to create and preserve decent, affordable housing for low and moderate-income Michigan residents.

MSHDA acquires its funds through Federal government programs (e.g., HUD), state government programs, and private investors (e.g., through the sale of bonds), and then provides benefits through multifamily loans, tax credits, single family loans, home improvement loans, Section 8 Housing Choice Voucher rental assistance, and community development grants and technical assistance programs. These benefits are generally provided through other entities, such as developers, banks, landlords, and local communities and development agencies.

MSHDA is currently using the Contractor product Elite. The system is used by MSHDA Housing Voucher Program staff at two locations: 735 E. Michigan Avenue, Lansing, Michigan 48912 with approximately 30 employees; and 3028 W. Grand Boulevard, Suite 4-600, Detroit, Michigan 48202 with approximately 20 employees. Additional users of the Elite system include Contracted Agents (approximately 125 agents) located throughout the state.

The United States Department of Housing and Urban Development (HUD) provides MSHDA with funding for the administration of the Housing Voucher Program. This federal program provides rental subsidies for very low income people who find their own housing in private homes and apartment buildings. MSHDA administers approximately 24,000 Housing Choice Vouchers.

MSHDA covers the entire state by contracting with agencies that work directly with the tenants and landlords and report back to MSDHA staff. These agencies access the Elite system through the web. Data is entered by the agencies and reviewed by MSHDA staff. Reports are printed from the database using Crystal Reports and/or MILO which are entered into the database.

The Elite system tracks information on residents, landlords, and applicants. The Elite system integrates payment standards, income limits, utility allowances, affordability calculations, etc. to ensure that rent amounts are calculated correctly. The Elite system tracks annual reexaminations to ensure that each resident has a reexamination every 12 months to comply with HUD guidelines.



## **1.100 Scope of Work and Deliverables**

### **1.101 IN SCOPE**

Contractor will provide the following services for the complete and successful implementation, support, maintenance, and hosting of the two programs that must integrate with the Contractor Elite system. One program will allow applicants to access their information and update it when needed. One program will allow landlords to access their information and update it when needed.

This project consists of the following scope:

- A. Software
- B. Testing
- C. Training
- D. Implementation
- E. Warranty
- F. Documentation
- G. Software license, maintenance and support services
- H. Hosting of the application
- I. Reserve bank of hours for future enhancements and/or legislative mandates

All parties to this Contract agree that, as of Contract signing, Section 2.093 PCI DATA Security Requirements, is not applicable to this Contract. If, during the term of this Contract, the State submits any Change Requests to the Contractor or any laws or regulations become effective whereby Section 2.093 becomes applicable, then the State and the Contractor will work to develop a mutually agreed upon project plan to ensure Contractor's compliance with Section 2.093. All costs incurred under the project plan will be the responsibility of the State.

A more complete description of the supplies and/or services sought for this project is provided in Section 1.104, Work and Deliverables.

### **1.102 OUT OF SCOPE**

The following are out of the scope of this Request for Proposals:

- Business process re-engineering services
- Licenses for any product other than those required for the direct integration with existing Elite Systems.
- Maintenance or enhancements other than what is required for the direct integration with existing Elite Systems.

### **1.103 ENVIRONMENT**

The links below provide information on the State's Enterprise information technology (IT) policies, standards and procedures which includes security policy and procedures, IT strategic plan, eMichigan web development and the State Unified Information Technology Environment (SUITE).

Contractors are advised that the State has methods, policies, standards and procedures that have been developed over the years. Contractors are expected to provide proposals that conform to State IT policies and standards. All services and products provided as a result of this contract must comply with all applicable State IT policies and standards. Contractor is required to review all applicable links provided below and state compliance in their response.

#### **Enterprise IT Policies, Standards and Procedures:**

<http://www.michigan.gov/dmb/0,1607,7-150-56355-107739--,00.html>

All software and hardware items provided by the Contractor must run on and be compatible with the DTMB Standard Information Technology Environment. Additionally, the State must be able to maintain software and other items produced as the result of the Contract. Therefore, non-standard development tools may not be used unless approved by DTMB. The Contractor must request, in writing, approval to use non-standard software development tools, providing justification for the requested change and all costs associated with any change. The DTMB Project Manager must approve any tools, in writing, before use on any information technology project.



It is recognized that technology changes rapidly. The Contractor may request, in writing, a change in the standard environment, providing justification for the requested change and all costs associated with any change. The State's Project Manager must approve any changes, in writing, and DTMB, before work may proceed based on the changed environment.

#### **Enterprise IT Security Policy and Procedures:**

[http://www.michigan.gov/documents/dmb/1310\\_183772\\_7.pdf](http://www.michigan.gov/documents/dmb/1310_183772_7.pdf)

[http://www.michigan.gov/documents/dmb/1310.02\\_183775\\_7.pdf](http://www.michigan.gov/documents/dmb/1310.02_183775_7.pdf)

[http://www.michigan.gov/documents/dmb/1325\\_193160\\_7.pdf](http://www.michigan.gov/documents/dmb/1325_193160_7.pdf)

[http://www.michigan.gov/documents/dmb/1335\\_193161\\_7.pdf](http://www.michigan.gov/documents/dmb/1335_193161_7.pdf)

[http://www.michigan.gov/documents/dmb/1340\\_193162\\_7.pdf](http://www.michigan.gov/documents/dmb/1340_193162_7.pdf)

[http://www.michigan.gov/documents/dmb/1350.10\\_184594\\_7.pdf](http://www.michigan.gov/documents/dmb/1350.10_184594_7.pdf)

#### **The State's security environment includes:**

- DTMB Single Login.
- DTMB provided SQL security database.
- Secured Socket Layers.
- SecureID (State Security Standard for external network access and high risk Web systems)

DTMB requires that its single - login security environment be used for all new client-server software development. Where software is being converted from an existing package, or a client-server application is being purchased, the security mechanism must be approved in writing by the State's Project Manager and DTMB Office of Enterprise Security.

#### **IT Strategic Plan:**

<http://www.michigan.gov/itstrategicplan>

#### **IT eMichigan Web Development Standard Tools:**

[http://www.michigan.gov/documents/som/Look\\_and\\_Feel\\_Standards\\_302051\\_7.pdf](http://www.michigan.gov/documents/som/Look_and_Feel_Standards_302051_7.pdf)

#### **The State Unified Information Technology Environment (SUITE):**

Includes standards for project management, systems engineering, and associated forms and templates – must be followed: <http://www.michigan.gov/suite>

### **1.104 Work and Deliverable**

#### **I. Services and Deliverables to Be Provided**

Contractor will provide the following services and Deliverables:

- A. Contractor will provide a Project plan** – The Project plan will describe the remaining tasks required to implement the cots software. The project plan will be delivered within 5 days after contract execution.
- B. Software** – The contractor will deliver the COTS software package for the following two supplemental modules: The software will perform according to the requirements listed within attachments H and I.

The two supplementary Modules provide the following:

1. A software program that will allow over 60,000 **applicants** to the Housing Choice Voucher Program to access their application information. They will need the ability to view their placement on the list along with their preferences, to update their income, family, and personal information including their mailing address, and to submit requests directly to MSHDA staff through a system e-mail address.
2. A software program that will allow over 20,000 **landlords** to access their account information. They will need the ability to update their account information, view their



HAP registers, inspection information, and payment history. They will need the ability to submit requests directly to MSHDA staff through a system e-mail address.

### C. Testing

Testing of the new Housing Choice Voucher Program applicant and landlord modules will be conducted in accordance with the test plan and schedule, as accepted by the DTMB Project Manager.

#### **Contractor responsibilities:**

1. Creation of the Test Plan and testing schedule.
2. Creation of test cases that verify the functionality, including the capacity/performance to handle the expected load including peak demand (load testing).
3. Provide a tool to log and report defects from all tests including UAT. The tool shall be easily accessible to the State to post and prioritize defects, review activity, and run reports.
4. Execution of testing:
  - a. **Unit Tests**
    - i. **As needed to meet functional and technical specifications and design.**
  - b. **Integration Test**
    - i. Validation that all functions work in unison as the modules are developed.
  - c. **Functional Test**
    - i. Occurs in conjunction with integration testing.
    - ii. Ensures the new system can process (handle) data correctly, receiving inputs from users and files, performing data error checks and input validation, passing data between modules correctly, storing and retrieving data correctly, printing reports, and presenting the proper error messages to the user.
  - d. **Performance Test**
    - i. Reserved.
  - e. **System Test**
    - i. Validates all functions work in unison.
    - ii. The Contractor shall perform the system test prior to submitting code to the DTMB/MSHDA for the User Acceptance Test.
  - f. Correction and resolution of all errors from the testing (listed above), unless specifically agreed to in writing by the DTMB Project Manager, before the system is turned over to the State for **User Acceptance Testing**.
    - i. Errors are not considered closed until verified at the same level of testing as occurred. Therefore, for example, an error during performance test must be verified in performance test as corrected or resolved prior to closure.
    - ii. Should a defect prevent continuation of testing by more than 1 business day, the State will not be held responsible for schedule and associated costs of the delay.
5. During all testing (unit, **performance, system and UAT**), the Contractor will monitor, identify, track and report issues to address:
  - a. System performance
  - b. Computer resource usage
6. Though the State will perform **User Acceptance Testing**, the Contractor will provide business and technical personnel to monitor progress, investigate and answer questions that may arise and assist users in documentation of defects during User Acceptance Testing
  - a. All errors, unless specifically agreed to in writing by the DTMB Project Manager, will be corrected or resolved by the Contractor before completion of User Acceptance Testing
    - i. Should a defect prevent continuation of testing by more than 1 business day, the State will not be held responsible for schedule and associated costs of the delay
7. Creation of a test results report which records the test events, the dates of the events, the test results and the analysis of the results (defects and resolution).



8. Update of the Requirements Traceability Matrix (RTM). This provides evidence that all requirements are accounted for in the testing to validate they perform as expected. This will cover the completion of the column marked "Test Case", where the Contractor is expected to provide a reference to approved Test Cases. The Test Case document(s) will not be considered complete until the updated version of the Requirements Traceability Matrix is approved.
9. Updates against this phase will be included in the Project Status Report.

**State Responsibilities:**

1. Perform **QA / System Testing** and provide Testing Summary
2. The DTMB Project Manager will provide access to 2 SOM specialists necessary to answer questions and provide information to the Contractor to support Testing activities.
3. The DTMB Project Manager will provide for the review and productive feedback of all draft, interim and final deliverables.
4. The DTMB Project Manager will monitor the test work by the Contractor
5. DTMB will provide sample data and test data requirements to assist the contractor in producing test data
6. Will provide a minimum of 5 SOM resources to perform necessary user testing as defined in the test plan

**Deliverable(s) for Testing:**

- Test Plan
- Test Cases/Scripts
- Test Environment
  - Implementation of defect tracking tool
  - Creation of Test Environment including data
  - Test Environment Verification
- Completion of tests as defined above
  - Correction or resolution of defects (unless so excluded in writing by DTMB Project Manager)
  - Test Result Report (developed after completion of each of the following: Performance Test, System Test)
- User Acceptance Test
  - Defect correction or resolution and Test Result Report
- Updated documentation
  - Review and, as required, update the various components of the Project Plan
- Updated Requirement Traceability Matrix

**Acceptance Criteria**

High-level acceptance criteria for Document Deliverables and Software Deliverables are listed in Section 1.501.

**D. Implementation**

The contractor must coordinate work activities with SOM project manager to load all necessary components of the Emphasys Elite system supplementary modules to the production platform.

**Contractor Responsibilities:**

The Contractor's handling of activities and deliverables for the Implementation Phase includes, but is not limited to the following:

- Delivery of the Housing Choice Voucher Program applicant and landlord COTS base modules
- The Contractor will perform installations in the contractor's environments.
- Provide final written work breakdown plan for configuration agreed upon by contractor and SOM project manager.
- Implement configuration changes as required per the agreed upon system design document.
- Provide stakeholder reviews of system configuration.
- Build interface between Emphasys Elite base system and Housing Choice Voucher Program applicant and landlord modules.



- The Contractor will validate the system is installed and ready for use for the following environments:
  - Test
  - **Production**
- The Contractor will validate the system is installed and ready for use under separate statements of work when required for the following environments:
  - Testing
  - Production
  - Training
- Obtain sign off on final system acceptance from SOM project manager

#### State Responsibilities:

#### The SOM Project Manager will:

- Provide access to 2 SOM specialists necessary to answer questions and provide information to the Contractor to support Implementation activities.
- Provide for the review and productive feedback within 5 days of delivery by contractor of all draft, interim and final deliverables.
- Monitor the resolution of issues and provide final acceptance of the system once the warranty period has passed and the system is acceptable.

#### Deliverable(s)

- Fully implemented and operational Housing Choice Voucher Program applicant and landlord modules approved by SOM project manager.

#### Acceptance Criteria

High-level acceptance criteria for Document Deliverables and Software Deliverables are listed in Section 1.501.

#### E. Training

Training will be conducted using a software manual and/or specific process sheets. These documents explain the purposes of the modules, input instructions, screen shots from the software, available reports, and other potential uses of available information. Training will be provided to approximately 5 State employees within 3 sessions of State accepted end user training.

These resources may be used on the job to answer questions and assist employees in successful system operations. These documents shall be updated, should the rules and/or the system be modified, by the Contractor.

#### Contractor Responsibilities:

1. The Contractor shall perform definition and execution of activities that provide knowledge so that users are able to perform their intended responsibilities.
2. The Training Plan should be completed and approved no later than the 14 business days prior to completion of the construction effort.
  - a. It will be revised, as necessary, during the testing and training phase.
3. Training material shall include:
  - a. Training/User Manual
4. Training material must be in a format that can be modified.
  - a. Hard copy material using tools such as MS Word and PowerPoint or other tools if so approved by the State Project Manager.
5. Training material (including anything on-line) cannot illustrate real data.
  - a. Names, identification numbers, etc. must reflect fictitious information to protect confidentiality of individuals unless specifically authorized.
6. Training will be “tested” before provided to a wider, general audience.
  - a. An initial session for each audience will “test” the effectiveness of the material through user feedback.



- b. The training material will be adjusted as necessary

Contractor will provide Go-Live Assistance support to ensure that the cutover goes smoothly and problems are resolved efficiently during the implementation.

**State Responsibilities**

- Provide the training facilities
- Coordinate with the Contractor the scheduling of training
- Identify the train-the-trainer staff

**Deliverable(s)**

1. Train the trainer training
2. End user training
3. System administration training for State personnel who will be responsible for ongoing maintenance and administration of the system, including security

Any Upgrades and new versions to the system that affect end-user functionality will include training at no additional cost (e.g. classroom or online training, training flier, release features, etc.)

All training manuals, training plans and other documentation provided become the property of the State.

**Acceptance Criteria**

High-level acceptance criteria for Document Deliverables and Software Deliverables are listed in Section 1.501.

**F. Warranty**

The warranty period is 90 days after full implementation of the Housing Choice Voucher Program applicant and landlord modules.

**Contractor responsibilities:**

During the warranty period, the Contractor shall be responsible for fixing any reported defects related to the application. The warranty period will not close if defects with a severity level of critical or high are unresolved. For defects, the contractor shall define the root cause of problems, recommend solutions and secure corrections.

Should warranty activities not fully utilize resources, the State may leverage said person(s) to work on knowledge transfer or backlog enhancements. Said enhancements if undertaken during this period do not impact the duration of the warranty period.

**State responsibilities:**

Report all defects to the Contractor along with priority and severity level for immediate remediation.

**Deliverable(s)**

1. Defect Tracking log – this may be a continuation of the existing defect tracking log, a new defect tracking log, or simply a new tab in the existing log.
2. Through the warranty period, continue to provide Management Reports, Weekly Performance Log, and Performance against SLA

**Acceptance Criteria**

High-level acceptance criteria for Document Deliverables and Software Deliverables are listed in Section 1.501.

**G. Documentation**

Contractor Responsibilities:

1. Contractor will provide a minimum of the following documentation in a standard electronic format such as MSWord or PDF, will be provided:
  - a. User and Technical Manuals



- b. Data Element Dictionary
  - c. Operations Manual
  - d. All updates of documentation during the term of the Contract, software license and maintenance agreement
2. The following documentation is provided for all modules and program development:
  - a. Baseline End-User training manuals to be used as a basis for "User Manuals" and online help.
3. The documentation of components, features, and use of the hardware/software shall be detailed such that resolution of most problems can be determined from the documentation, and most questions can be answered.
4. All system, operational, user, change, and issue documentation must be available in electronic format, published to an internet website, accessible to State users, updated regularly, with unique numerical identifiers for each section and be consistent with the most current version of the application(s) and three (3) previous versions.
5. All system, operations, user, change and issue documentation is to be organized in a format, which is approved by the State and facilitates updating and allows for revisions to the documentation to be clearly identified including the three (3) previous versions.
6. The Contractor must develop and submit for State approval complete, accurate, and timely system, operations, and user documentation.
7. The Contractor must notify the State of any discrepancies or errors outlined in the system, operations, and user documentation.

**Contractor responsibilities:**

The Contractor shall provide the documentation outlined in this section.

**State responsibilities:**

Review and accept the documentation provided by the Contractor.

**Deliverable(s)**

- Refer to items 1 through 7 listed above

**Acceptance Criteria**

High-level acceptance criteria for Document Deliverables and Software Deliverables are listed in Section 1.501.

**H. Software License, maintenance and support services**

Contractor is fully responsible for managing and administering the two requested products that integrate into the Elite system. In that regard, the Contractor shall supply annual software maintenance and support services that provide systems management (e.g. develop and provide corrections, changes, or workarounds for any defects, errors, or malfunctions in the Contractor software and that also provide new versions, updates, and/or enhancements to the two software programs).

Contractor must fully understand all functionality provided by the Elite Systems software and the interaction between these two products. Contractor must be able to explain how each aspect of the software works and be able to document needed corrections for submission of resolution.

Software Maintenance and support will include, but not be limited to:

1. System Maintenance
2. Help Desk
3. Adaptive and Preventive Maintenance
4. Performance Maintenance
5. Documentation Update

Contractor will fully support the Elite Applicant and Partner Portals as detailed within Attachment K Software Agreement, and contract 071B9200171 (Michigan State Housing Development Authority Elite



System) for the current Elite system in use by DTMB/MSHDA. Contractor' comprehensive Maintenance Agreement includes the following services to ensure comprehensive support:

- Software updates related to HUD regulations that concern existing software functionality
- Toll-free support hotline, answered by U.S. based, English-speaking staff
- Unlimited number of support calls
- Contractor Help Desk support
- Web-based connectivity for support
- All services are performed by qualified personnel who are familiar with Elite
- Dedicated personnel to research and design HUD requirements
- Email notification to clients regarding HUD updates and final rulings
- Comprehensive status of all HUD-mandated changes and Federal and state mandated changes provided within our software (according to terms of SMA)
- Priority Response Time for emergencies (within 4 hours)
- Contractor maintenance released enhancements (non-custom programming enhancements that are made available to the entire client base)
- Dedicated version control to ensure timely upgrades
- Published annual client survey results by a third party
- Automatic email notification on closed tickets
- Routine courtesy follow up calls to ensure customer satisfactionNo cost product training limited to procedural clarification

#### **Deliverable(s)**

1. Yearly maintenance as described above.

#### **Acceptance Criteria**

High-level acceptance criteria for Document Deliverables and Software Deliverables are listed in Section 1.501.

#### **I. Hosting Requirements**

The Elite database system currently includes approximately 24,000 participants, 20,000 landlords, and 60,000 applicants throughout the state of Michigan. There must not be a disruption in the operation of the Elite system and the two requested software programs.

#### **Contractor Responsibilities:**

1. Prevent disruption of the Elite System
2. Prevent disruption of the proposed landlord program
3. Prevent disruption of the proposed applicant program
4. Identify any Licensing maintenance costs for the landlord and applicant programs
5. Provide Hosting and Site Security
6. Conduct Equipment Maintenance and Support
7. Identify a Disaster Recovery Site

Hosting (including procurement, installation, and maintenance) for the Contractor Elite Applicant and Partner Portals for live, pre-live, development, and test environments

Operational services for hosting hardware, to include: systems management; disaster recovery; security administration; storage services; backup and off-site retention.

Contractor will provide hosting of the Elite Applicant and Partner Portals for DTMB/MSHDA on a twenty-four (24) hour per day, seven (7) day per week, 365 days per year basis ("24x7x365").

#### **Additional Contractor Responsibilities:**

- a. Meet agreed upon responsibilities as outlined in the Scope of Work to ensure timely production of the deliverables and service levels identified.



- b. Provide a single point of contact who will be the primary point of contact between Contractor and DTMB/MSHDA and who will work to understand requirements on an ongoing basis, communicate environment status and escalate, as needed, problems or issues. Responsibilities will also include, but are not limited to; managing all Contractor staff and resources to achieve the deliverables of this Agreement, and providing regular communication and participation in joint planning processes as requested to integrate DTMB/MSHDA's current and future plans that will directly affect current and future support.
- c. Provide a complete staff of trained and qualified personnel as required to meet the deliverables. Specific hours of service are 24x7x365. The average staffing level of Contractor employees dedicated to the DTMB/MSHDA's account, their specific work tasks, and locations (on-site or remote) are detailed in Attachment F – Hosting Requirements.
- d. Communicate to Contractor/DTMB/MSHDA any issues that relate to facility environmental systems, engineering design, and facility subcontractor performance as required to meet agreed upon deliverables.
- e. Provide service level reports and service level reviews, in formats, time frames and processes as mutually agreed, and as called for in the deliverables.
- f. Assume management for, and keep in force, all existing service and maintenance agreements for DTMB/MSHDA's hardware and software as called for in the RFP. Contractor shall not allow any modifications, amendments, or terminations that can in any way impact the ability to deliver defined service levels. In the event Contractor determines that service, and/or software upgrades can be provided more cost effectively without a maintenance agreement, Contractor will obtain DTMB/MSHDA's written permission prior to canceling the agreement.
- g. Be responsible for obtaining and maintaining the appropriate service agreements, warranty information or agreements, and/or hardware and software maintenance contracts for each new asset obtained during the term of the contract.
- h. Provide all supplies and consumables necessary for the operational support of the hosting facility and the reporting functions, not to exceed those identified in this Statement of Work.

**DTMB/MSHDA Responsibilities:**

- a. Meet agreed upon responsibilities in order for Contractor to produce the identified deliverables and service levels. These responsibilities include: providing access to all areas of the State owned facilities, as necessary; make decisions and provide information in a timely manner; provide access to all relevant tangible and intellectual property, to the extent possible.
- b. Provide written authorization to Contractor if any compliance report required actions are not to be taken or should be overridden based on their specific business requirements.
- c. Maintain financial liability resulting from the inappropriate use of communication products (network systems and equipment) by DTMB/MSHDA staff, unless such violation occurred as a result of actions or negligence by Contractor staff.
- d. Provide Contractor with a copy of all relevant documents (for instance; purchase orders, rental/lease agreements, service agreements, warranties, amendments, and maintenance contracts) for the existing equipment and software covered in the Scope of Work.
- e. Take reasonable, necessary steps with third party vendors to allow Contractor to perform its obligations under this schedule to meet defined deliverables.

**Contractor-Owned Data Center****Contractor Responsibilities:**

- a. Contractor will support the data center facilities and maintain the facility in a manner that will support DTMB/MSHDA's server and attached storage device requirements.
- b. Supervise additional facilities maintenance activities within the scope of this Scope of Work.
- c. Communicate any issues with Contractor/DTMB/MSHDA that relate to facility environmental systems, engineering design, and facility performance as appropriate.
- d. Contractor will monitor and enforce the Access List provided by DTMB/MSHDA.

**DTMB/MSHDA Responsibilities:**



- a. DTMB/MSHDA must respond to Contractor in advance, to the extent possible, of making any environmental changes that may negatively impact service levels such as environmental systems or facility engineering design.

### **Server Management Services**

#### **Operating System and Hardware Environment Support**

##### **Contractor will perform the following tasks:**

- a. Perform routine system operation functions and system console operations actions such as power on/off, system reboots, and start/stop/reset. Contractor also will perform required device intervention.
- b. Plan and implement necessary software changes for operating system and non-application software.
- c. Install patches per vendor instructions for security exposures deemed critical by the vendor.
- d. Document and track all configuration management problems using the site change management process.
- e. Coordinate all changes through the site's change management process.
- f. Provide problem escalation and interact as necessary with third-party suppliers.
- g. Inventory information about operating system release levels, patches, hardware shipping and receiving, raised floor space requirements, equipment placement, cabling, fiber, and connectivity details.
- h. Perform operation system software tuning as required to maintain daily operations for Contractor provided services.

### **Operating System Upgrades**

##### **Contractor will perform the following tasks:**

- a. Notify DTMB/MSHDA of operating system and base software upgrades and patches using the change management process.
- b. Apply preventive and corrective maintenance to all system level software (operating system and other non-application software).
- c. Install and upgrade all system level software (the operating system and other non-application software).
- d. Maintain current version or minus 1 with DTMB/MSHDA approval or as otherwise mutually agreed.

### **Application Monitoring**

##### **Contractor will perform the following tasks 24 x 7 x 365:**

- a. Provide system support and monitoring for major DTMB/MSHDA application functions using supplier automation agents and Contractor customized thresholds.
- b. Identify, escalate, and document problems using the problem management process as provided in SOW.

### **Performance Management**

##### **Contractor will perform the following tasks:**

- a. Monitor CPU, memory, and disk usage against predetermined thresholds.
- b. Collect performance data to assist in problem determination.
- c. Provide performance management functions and establish performance monitoring thresholds for major processes.
- d. Implement changes as necessary to optimize the effectiveness and efficiency of the server platform.

### **Capacity Management**

##### **Contractor will perform the following tasks:**

- a. Provide capacity management and planning processes, including short term and long term planning, forecasting resource requirements, and analyzing and reporting resource trends.
- b. Use capacity modeling processes and tools to project the effects of new business and workload changes or when large configuration changes are performed in the environment on request of DTMB/MSHDA.

##### **DTMB/MSHDA will perform the following task:**

- a. Provide data, user, volume growth forecasts that will impact the computing environment.

### **Database Installation, Maintenance and Support Services**

##### **Contractor will perform the following tasks:**



- a. Provide Database Services to plan, install, and maintain the operating environment.
- b. Install and upgrade all system level software or database related application software requiring super user access.
- c. Coordinate all changes through the agreed upon change management process.
- d. Implement start up and shutdown processes.
- e. Notify DTMB/MSHDA of any database software upgrades and patches using the site change management process.
- f. Apply preventive and corrective maintenance to all system level software.
- g. Provide an initial full database back up followed by subsequent incremental backups per the scope of work.
- h. Provide problem escalation and interact as necessary with third-party suppliers.

**Database Monitoring Service**

Contractor will perform the following tasks during normal business hours:

- a. Provide system database monitoring against predefined database monitoring thresholds.
- b. Identify, escalate, and document problems using the problem management process.
- c. Monitor, verify, and escalate issues as necessary for scheduled database backups and restores.

**Database Backup and Restore Services**

Contractor will perform the following tasks:

- a. Perform database backup and restore services as hot backups.
- b. Provide recoverability services including daily online backups with seven days retention cycle.
- c. Perform database recovery and repairs.

**System Backup and Restore Services**

Contractor will perform the following tasks:

- a. Include the operating system and related system software file systems in the scope of the backups and restores as defined in the service levels.
- b. Adjust the backup and restoration plan as new components are added to the system or availability requirements change.
- c. Respond to all manual and automated CD/tape mount requests and maintain the integrity of the CD/tape media environment, including assessing media reliability, monitoring the aging and replacement process, handling scratched tapes, and maintaining media processes as required on an ongoing basis.

**Deliverables:**

- i. Elite Software License Maintenance
- ii. Hosting & Site Security (See Attachment H)
- iii. Disaster Recovery (See Attachment G)

Refer to for further technical definition:

- Attachment C – Hosting Environment,
- Attachment E – Security and Disaster Recovery Process

**I. HARDWARE:****Contractor Responsibilities:**

The Contractor shall provide the following ongoing tasks over the period of the contract: procuring, installing, and maintaining application server(s) and other required hardware.

The solution must include a production and test environment. The test hardware/operating system environment must mirror the production environment as closely as possible. The contractor must provide the disaster recovery, back-up, and security processes for the IT environment

**State Responsibilities:**

1. Meet agreed upon responsibilities in order for Contractor to produce the identified deliverables and service levels. These responsibilities include: providing access to all areas of the State owned facilities,



as necessary; make decisions and provide information in a timely manner; provide access to all relevant tangible and intellectual property, to the extent possible.

2. Provide written authorization to Contractor if any compliance report required actions are not to be taken or should be overridden based on their specific business requirements.
3. Maintain financial liability resulting from the inappropriate use of communication products (network systems and equipment) by MSHDA staff, unless such violation occurred as a result of actions or negligence by Contractor staff.
4. Provide Contractor with a copy of all relevant documents (for instance; purchase orders, rental/lease agreements, service agreements, warranties, amendments, and maintenance contracts) for the existing equipment and software covered in the Scope of Work.
5. Take reasonable, necessary steps with third party contractors to allow Contractor to perform its obligations under this schedule to meet defined deliverables.
6. DTMB/MSHDA must respond to Contractor in advance, to the extent possible, of making any environmental changes that may negatively impact service levels such as environmental systems or facility engineering design.

**Deliverable(s)**

1. Vendor hardware refresh (See Attachment C)
2. Server and Network infrastructure installation

**Acceptance Criteria**

High-level acceptance criteria for Document Deliverables and Software Deliverables are listed in Section 1.501.

**J. Reserve Bank of Hours for Future Enhancements and legislative changes**

Future enhancements will be required based on federal and state requirements or on customer service needs. A separate Statement of Work will be written for any required enhancements.

**Contractor Responsibilities**

- Review the statement of work, and write a proposal.

**State Responsibilities**

- Write the statement of work
- Review the proposal, and respond



## Deliverable(s)

### New SOW based on future enhancements

#### Acceptance Criteria

High-level acceptance criteria for Document Deliverables and Software Deliverables are listed in Section 1.501.

### 1.200 Roles and Responsibilities

#### 1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES

##### A. Contractor Staff

See Attachment B – Organization Chart.

Resource Role & Name	Activities Performed	Duration
Contractor Project Manager  Andrea Webb	<ul style="list-style-type: none"> <li>• Single Point of Contact (SPOC)</li> <li>• Initial Contact person representing Contractor Software</li> <li>• Provides Contractor executive oversight to project</li> <li>• Executive Monitoring of project progress</li> <li>• Supports the management of the Contract</li> <li>• Facilitates dispute resolution</li> <li>• Advises the State of performance under the terms and conditions of the Contract Point of Contact for regularly scheduled meetings</li> <li>• Directs Overall Services Activities</li> <li>• Development of work plans</li> <li>• Manages and Approves Deliverables</li> <li>• Facilitates resource scheduling</li> <li>• Contract Management</li> <li>• Tracks all change orders</li> <li>• Scope management</li> <li>• Monitors project progress</li> <li>• Reviews status reports</li> </ul>	Proposal Stage (prior to beginning of contract work) through Project Timeframe (as scheduled)
Contractor Project Scheduler  Lenore Senter	<ul style="list-style-type: none"> <li>• Scheduling of Tasks throughout the implementation</li> </ul>	Through Project Timeframe (as needed)
Contractor Lead Software Architect  Nick Doyle	<ul style="list-style-type: none"> <li>• Provide software architecture expertise</li> </ul>	Through Project Timeframe (as needed)
CGI Hosting	<ul style="list-style-type: none"> <li>• Provide Hosting Facility, hardware, and software to host DTMB/MSHDA's Elite System.</li> </ul>	Entire Project Timeframe
Contractor Other staff as needed	<ul style="list-style-type: none"> <li>• Provide professional expertise business and software optimization</li> <li>• Provide Training</li> </ul>	Scheduled Instances during entire Project Timeframe



Contractor must provide a list of all subcontractors, including firm name, address, contact person, and a complete description of the work to be contracted. Include descriptive information concerning subcontractor's organization and abilities.

The Subcontractor is CGI Technologies and Solutions, Inc. 1001 Lakeside Avenue, suite 800, Cleveland, Oh. 44114-1151.

The Contractor's Single Point of Contact (SPOC) is Andrea Webb. The duties of the SPOC shall include, but not be limited to:

- supporting the management of the Contract,
- facilitating dispute resolution, and
- advising the State of performance under the terms and conditions of the Contract.

The State reserves the right to require a change in the current SPOC if the assigned SPOC is not, in the opinion of the State, adequately serving the needs of the State.

The Contractor will provide, and update when changed, an organizational chart indicating lines of authority for personnel involved in performance of this Contract and relationships of this staff to other programs or functions of the firm. This chart must also show lines of authority to the next senior level of management and indicate who within the firm will have prime responsibility and final authority for the work.

All Key Personnel may be subject to the State's interview and approval process. Any key staff substitution must have the prior approval of the State. The State has identified the following as key personnel for this project:

- *Project Manager*

*The Contractor's Single Point of Contact (SPOC) is Andrea Webb.*

**The Contractor's project manager** shall interact with the designated personnel from the State to insure a smooth transition to the new system. The project manager/technical lead will coordinate all of the activities of the Contractor personnel assigned to the project and create all reports required by State. The Contractor's project manager/technical lead responsibilities include, at a minimum:

- Manage all defined Contractor responsibilities in this Scope of Services.
- Manage Contractor's subcontractors, if any
- Develop the project plan and schedule, and update as needed
- Serve as the point person for all project issues
- Coordinate and oversee the day-to-day project activities of the project team
- Assess and report project feedback and status
- Escalate project issues, project risks, and other concerns
- Review all project deliverables and provide feedback
- Proactively propose/suggest options and alternatives for consideration
- Utilize change control procedures
- Prepare project documents and materials
- Manage and report on the project's budget

**The Contractor's project manager** shall meet these requirements:

- 7 years of experience application configuration and implementation of projects of similar size and scope.
- 2 years of experience in managing projects implementing the contractor's proposed solution
- Education: Bachelor's Degree or equivalent experience

The Contractor will provide sufficient qualified staffing to satisfy the deliverables of this Contract.

## **B. On Site Work Requirements**

### **1. Location of Work**



The work is to be performed, completed, and managed at the following locations: Contractor's site.

**2. Hours of Operation:**

- a. Normal State working hours are 8:00 a.m. to 5:00 p.m. EST, Monday through Friday, with work performed as necessary after those hours to meet project deadlines. No overtime will be authorized or paid.
- b. The State is not obligated to provide State management of assigned work outside of normal State working hours. The State reserves the right to modify the work hours in the best interest of the project.
- c. Contractor shall observe the same standard holidays as State employees. The State does not compensate for holiday pay.

**3. Travel:**

- a. No travel or expenses will be reimbursed. This includes travel costs related to training provided to the State by Contractor.
- b. Travel time will not be reimbursed.

**4. Additional Security and Background Check Requirements:**

Contractor must present certifications evidencing satisfactory Michigan State Police Background checks ICHAT and drug tests for all staff identified for assignment to this project.

In addition, proposed Contractor personnel will be required to complete and submit an RI-8 Fingerprint Card for the National Crime Information Center (NCIC) Finger Prints, if required by project.

Contractor will pay for all costs associated with ensuring their staff meets all requirements.

**1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES**

The State will **not** provide the following resources for the Contractor's use on this project:

- Work space
- Minimal clerical support
- Desk
- Telephone
- PC workstation
- Printer
- Access to copiers and fax machine

The State project team will consist of Executive Subject Matter Experts (SME's), project support, and a DTMB and Agency project manager:

**Executive Subject Matter Experts**

The Executive Subject Matter Experts represent the business units.. They shall be available on an as needed basis. The Executive SME's will be empowered to:

- Resolve project issues in a timely manner
- Review project plan, status, and issues
- Resolve deviations from project plan
- Provide acceptance sign-off
- Utilize change control procedures
- Ensure timely availability of State resources
- Make key implementation decisions, as identified by the Contractor's project manager, within 48-hours of their expected decision date.

Name	Agency/Division	Title	Phone/e-mail
To be determined			



### State Project Manager- (DTMB and Agency)

DTMB will provide a Project Manager who will be responsible for the State's infrastructure and coordinate with the Contractor in determining the system configuration.

The State's DTMB Project Manager will provide the following services:

- Provide State facilities, as needed
- Coordinate the State resources necessary for the project
- Facilitate coordination between various external contractors
- Facilitate communication between different State departments/divisions
- Provide acceptance and sign-off of deliverable/milestone
- Review and sign-off of timesheets and invoices
- Resolve project issues
- Escalate outstanding/high priority issues
- Utilize change control procedures
- Conduct regular and ongoing review of the project to confirm that it meets original objectives and requirements
- Document and archive all important project decisions
- Arrange, schedule and facilitate State staff attendance at all project meetings.

Name	Agency/Division	Title
Tracie Mansberger	DTMB	DTMB Project Manager
Lisa Dove	Agency	Agency Project Manager

DTMB shall provide a Contract Administrator whose duties shall include, but not be limited to, supporting the management of the Contract.

Name	Agency/Division	Title
Mark Lawrence	DTMB	Contract Administrator

### **1.203 OTHER ROLES AND RESPONSIBILITIES**

*Reserved.*

### **1.300 Project Plan**

#### **1.301 PROJECT PLAN MANAGEMENT**

##### **Preliminary Project Plan**

The Contractor's preliminary project plan is in Attachment G – Project Plan.

The State must have services begin in production within 60 days of the contract start date.

##### **Orientation Meeting**

Upon 10 calendar days from execution of the Contract, the Contractor will be required to attend an orientation meeting to discuss the content and procedures of the Contract. The meeting will be by telephone conference call, at a date and time mutually acceptable to the State and the Contractor.

##### **Performance Review Meetings**

The State will require the Contractor to attend monthly meetings, at a minimum, to review the Contractor's performance under the Contract. The meetings will be held by teleconference call, as mutually agreed by the State and the Contractor.

##### **Project Control**

1. The Contractor will carry out this project under the direction and control of DTMB Project Manager.



2. Within 10 working days of the execution of the Contract, the Contractor will submit to the State project manager(s) for final approval of the project plan. This project plan must be in agreement with Article 1, Section 1.104 Work and Deliverables, and must include the following:
  - The Contractor's project organizational structure.
  - The Contractor's staffing table with names and title of personnel assigned to the project. This must be in agreement with staffing of accepted proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State.
  - The project work breakdown structure (WBS) showing sub-projects, activities and tasks, and resources required and allocated to each.
  - The time-phased plan in the form of a graphic display, showing each event, task, and decision point in the WBS.
3. The Contractor will manage the project in accordance with the State Unified Information Technology Environment (SUITE) methodology, which includes standards for project management, systems engineering, and associated forms and templates which is available at <http://www.michigan.gov/suite>
  - a. Contractor will use an automated tool for planning, monitoring, and tracking the Contract's progress and the level of effort of any Contractor personnel spent performing Services under the Contract. The tool shall have the capability to produce:
    - Staffing tables with names of personnel assigned to Contract tasks.
    - Project plans showing tasks, subtasks, deliverables, and the resources required and allocated to each (including detailed plans for all Services to be performed within the next 60 calendar days, updated semi-monthly).
    - Updates must include actual time spent on each task and a revised estimate to complete.
    - Graphs showing critical events, dependencies and decision points during the course of the Contract.
  - b. Any tool(s) used by Contractor for such purposes must produce information of a type and in a manner and format that will support reporting in compliance with the State standards.

### **1.302 REPORTS**

Reporting formats must be submitted to the State's Project Manager for approval within 20 business days after the execution of the contract resulting from this RFP. Once both parties have agreed to the format of the report, it shall become the standard to follow for the duration of the contract.

Reports to be furnished by the Contractor:

- Weekly Project status
- Updated project plan
- Summary of activity during the report period
- Accomplishments during the report period
- Deliverable status
- Schedule status
- Action Item status
- Issues
- Change Control
- Repair status
- Maintenance Activity

### **1.400 Project Management**

#### **1.401 ISSUE MANAGEMENT**

An issue is an identified event that if not addressed may affect schedule, scope, quality, or budget.

The Contractor shall maintain an issue log for issues relating to the provision of services under this Contract. The issue management log must be communicated to the State's Project Manager on an agreed upon schedule, with email notifications and updates. The issue log must be updated and must contain the following minimum elements:



- Description of issue
- Issue identification date
- Responsibility for resolving issue.
- Priority for issue resolution (to be mutually agreed upon by the State and the Contractor)
- Resources assigned responsibility for resolution
- Resolution date
- Resolution description

Issues shall be escalated for resolution from level 1 through level 3, as defined below:

Level 1 – Business leads

Level 2 – Project Managers

Level 3 – Executive Subject Matter Experts (SME's)

#### **1.402 RISK MANAGEMENT**

A risk is an unknown circumstance or event that, if it occurs, may have a positive or negative impact on the project.

The Contractor is responsible for establishing a risk management plan and process, including the identification and recording of risk items, prioritization of risks, definition of mitigation strategies, monitoring of risk items, and periodic risk assessment reviews with the State.

A risk management plan format shall be submitted to the State for approval within twenty (20) business days after the effective date of the contract resulting from the upcoming RFP. The risk management plan will be developed during the initial planning phase of the project, and be in accordance with the State's PMM methodology. Once both parties have agreed to the format of the plan, it shall become the standard to follow for the duration of the contract. The plan must be updated bi-weekly, or as agreed upon.

The Contractor shall provide the tool to track risks. The Contractor will work with the State and allow input into the prioritization of risks.

The Contractor is responsible for identification of risks for each phase of the project. Mitigating and/or eliminating assigned risks will be the responsibility of the Contractor. The State will assume the same responsibility for risks assigned to them.

#### **1.403 CHANGE MANAGEMENT**

Change management is defined as the process to communicate, assess, monitor, and control all changes to system resources and processes. The State also employs change management in its administration of the Contract.

If a proposed contract change is approved by the Agency, the Contract Administrator will submit a request for change to the Department of Technology, Management and Budget (DTMB), Procurement Buyer, who will make recommendations to the Director of DTMB-Procurement regarding ultimate approval/disapproval of change request. If the DTMB Procurement Director agrees with the proposed modification, and all required approvals are obtained (including State Administrative Board), the DTMB-Procurement Buyer will issue an addendum to the Contract, via a Contract Change Notice. **Contractors who provide products or services prior to the issuance of a Contract Change Notice by the DTMB-Procurement, risk non-payment for the out-of-scope/pricing products and/or services.**

The Contractor must employ approved (SUITE) change management process to record and process requests that are out-of-scope or considered a change in business needs of the State while the migration is underway.

The Contractor will employ the change control methodologies to justify changes in the processing environment, and to ensure those changes will not adversely affect performance or availability.

#### **1.500 Acceptance**

#### **1.501 CRITERIA**



The following criteria will be used by the State to determine acceptance of services and/or deliverables provided under this contract. The criteria also cover two aspects of compliance: performance of the Contractor in meeting the requirements in the contract, and contract compliance, both financial and non-financial.

- A. Document Deliverables - Documents include, but are not limited to plans, design documents, project schedules and artifacts, user guides, and procedure manuals.
  - A. Documents are dated and in electronic format, compatible with State of Michigan software in accordance with Article 1.302.
  - B. Requirements documents are reviewed and updated throughout the development process to assure requirements are delivered in the final product.
  - C. Draft documents are not accepted as final deliverables.
  - D. The documents will be reviewed and accepted in accordance with the requirements of the Contract.
  - E. The State will review technical documents within 30 days of receipt of the final documents.
    - a. Approvals will be written and signed by the State's Project Managers with assistance from other State resources and impacted Agencies.
    - b. Unacceptable issues will be documented and submitted to the Contractor.
    - c. After issues are resolved or waived, the Contractor will resubmit documents for approval within 30 days of receipt of final documents.
- B. Software Deliverables - Software includes, but is not limited to, software product, development tools, support tools, data migration software, interfaces, integration software, and installation software.
  - 1. Beta software is not accepted as final deliverable.
  - 2. The software will be reviewed and accepted in accordance with the requirements of the contract.
  - 3. MSHDA and DTMB will review software within a mutually agreed upon timeframe for acceptance of functionality, usability, installation, performance, security, standards compliance, backup/recovery, and operation.
    - a. Approvals will be written and signed by MSHDA and DTMB Project Managers.
    - b. Unacceptable issues will be documented and submitted to the Contractor.
    - c. After issues are resolved or waived, the Contractor will resubmit software for approval within 30 days of receipt of the final documents.
  - 4. Final acceptance of the software will depend on the successful completion of User Acceptance Testing (UAT).
  - 5. Testing will demonstrate the system's compliance with the requirements of the contract. At a minimum, the testing will confirm the following:
    - a. Functional - the capabilities of the system with respect to the functions and features described in the contract.
    - b. Performance - the ability of the system to perform the workload throughput requirements. All problems should be completed satisfactorily within the allotted time frame.
  - 6. MSHDA and DTMB will review test software, data, and results within a mutually agreed upon timeframe.
    - a. Approvals will be written and signed by MSHDA and DTMB Project Managers.
    - b. Unacceptable issues will be documented and submitted to the Contractor.
    - c. After issues are resolved or waived, the Contractor will resubmit test software, data and results for approval within 30 days of receipt of the final documents
  - 7. DTMB will review software license agreements within a mutually agreed upon timeframe.
    - a. Approvals will be written and signed by MSHDA and DTMB Project Managers.
    - b. Unacceptable issues will be documented and submitted to the Contractor.
    - c. After issues are resolved or waived, the Contractor will resubmit the license agreement for approval and final signature by authorized State signatory within 30 days of receipt
- C. Service Deliverables - Services include, but are not limited to training, data migration, help desk, and support.
  - 1. The services will be accepted in accordance with the requirements of the contract.
  - 2. The State will review a Request for Approval of Services within 30 days of completion or implementation.



- a. Approvals will be written and signed by the State's Project Managers.
- b. Unacceptable issues will be documented and submitted to the Contractor.
- c. After issues are resolved or waived, the Contractor will resubmit a Request for Approval of Services for approval within 30 days of receipt of final documents.
3. The State will review migrated and converted data within 30 days of completion.
  - a. Approvals will be written and signed by the State's Project Managers.
  - b. Unacceptable issues will be documented and submitted to the Contractor.
  - c. After issues are resolved or waived, the Contractor will resubmit a request for approval within 30 days of receipt of final documents.
4. State staff will receive the training services.
5. The Contractor has the tools and connectivity installed, in compliance with State standards, to properly support and monitor the system.

Ongoing Operations - For ongoing activities, such as project status reports and work plan updates, acceptance of the initial report or plan will constitute acceptance of the deliverable, for purposes of services' payment.

#### 1.502 Final Acceptance

The following criteria will be used by the State to determine Final Acceptance of each Task provided under the SOW.

1. All documents, software and services of an enhancement request are delivered and accepted by MSHDA and DTMB in accordance with the requirements of this contract.
2. After installation and configuration in the production environment, all issues discovered during the following 30-day period are resolved and accepted or waived by MSHDA and DTMB. Approvals will be written and signed by MSHDA and DTMB Project Managers.

### **1.600 Compensation and Payment**

#### **1.601 COMPENSATION AND PAYMENT**

Expenditures to be absorbed by Contractor will include travel expenses; postage for items sent to DTMB/MSHDA; copy/duplicating charges for items copied when working remotely and all telecom, digital and cellular costs incurred when working remotely (i.e. use of personal or work cell phones by contractor staff, etc.).

When Contractor is working in State offices in Lansing, Michigan, the State will provide the work space; desk; telephone; PC; Printer; minimal clerical support; and access to copiers and a fax machine.

In addition, the State will pay the postage costs for any documents that are mailed from by State employees to Contractor. The State will **not** pay for telecom, digital and cellular costs incurred. (i.e. use of personal or work cell phones by contractor staff, etc.)

All invoices related to this contract must be submitted and approved for payment as tasks are completed.

#### **Invoicing Method**

- Invoices are paid within 45 days of receipt by the SOM
- Contractor will ensure that invoices are properly itemized as defined by the State.
- Contractor will invoice DTMB/MSHDA at least once per month for services provided.

#### **Method of Payment**

The project will be paid on a firm, fixed price deliverable-based basis.

Attachment A Costs Tables must be used as the format for submitting pricing information.

#### **Payment**

MSHDA/DTMB will compensate the Contractor in accordance with the agreed upon deliverable price. All invoices should reflect actual work done. Specific details of invoices and payment will be agreed upon between MSHDA/DTMB and the Contractor after the proposed Contract Agreement has been signed and



accepted by both the Contractor and the Director of Purchasing, Department of Technology Management and Budget. This activity will occur only upon the specific written direction from the Purchasing Operations.

Contractor will submit properly itemized invoices to the "Bill To" address on the Purchase Order. Invoices shall provide information, and itemize, as applicable:

- Contract number;
- Purchase Order number;
- Contractor name, address, phone number, and Federal Tax Identification Number;
- Description of any commodities/equipment, including quantity ordered;
- Date(s) of delivery and/or date(s) of specific deliverables, installation and set up;
- Price for each item, or Contractor's list Price for each item and applicable discounts;
- Maintenance charges;
- Net invoice Price for each item;
- Shipping costs;
- Other applicable charges;
- Total invoice Price; and
- Payment terms including any available prompt payment discounts.
- If fixed price, attach fixed price quote for that job.
- If time and materials, attach contractor's time sheet to reflect days and times worked.

**The Contractor shall invoice for the line items in the One-Time cost table following acceptance of deliverables.**

**Future Enhancements** may be invoiced according to the terms of the Statement of Work, and the purchase order.

**Software:** 25% of the License fee is due upon contract execution, 75% will be billed upon installation acceptance.

**Maintenance and Support:** Maintenance and Support is billed upon installation acceptance. Contractor will prorate the Maintenance and bill for the remainder of the year (The State's annual renewal date is October 1). Maintenance and Support will be invoiced annually, at the beginning of the State's fiscal year.

**Hosting:** Hosting is billed upon installation acceptance. Contractor will prorate the Maintenance and bill for the remainder of the year (The State's annual renewal date is October 1). Hosting will be invoiced annually, at the beginning of the State's fiscal year.

**Costs for Customization identified in Attachment I – Functional Requirements:**

- Applicant Portal requirement **FR23** (Attachment I – Functional Requirements) has been added to the software and additional custom programming costs will not apply.
- Landlord Portal requirement **FR8** (Attachment I – Functional Requirements) will require custom programming at an additional fee. A detailed Product Requirement Document (PRD) will be required to determine exact pricing. An estimate of the cost is \$4,560.00 to allow the owner and the payee to be able to access the account via separate login accounts.
- Landlord Portal requirement **FR9** (Attachment I – Functional Requirements), additional custom programming fees will apply. Additional information if required regarding which functionality you are requesting in order to determine an estimated cost.

**Out-of-Pocket Expenses**

**Travel and other expenses must be approved by the DTMB Project Manager before they are incurred.** This includes travel costs related to training provided to the State by the Contractor. Travel time will **not** be reimbursed. No travel or expenses will be reimbursed without the prior written approval of the DTMB project manager.



During the State's fiscal year-end, until budgets are approved, hosting and maintenance and support charges shall be invoiced on an annual basis, in advance. Payment of maintenance service/support of less than one (1) month's duration shall be prorated at 1/30<sup>th</sup> of the basic monthly maintenance charges for each calendar day. The State will not pay for maintenance on modules the State is not using. The State will only pay maintenance on modules that are running in production.

Incorrect or incomplete invoices will be returned to Contractor for correction and reissue.

**1.602 HOLDBACK**

Reserved.



## **Article 2. Terms and Conditions**

### **2.000 Contract Structure and Term**

#### **2.001 CONTRACT TERM**

***This Contract is for a period of 5 years beginning October 24, 2012 through October 23, 2017.*** All outstanding Purchase Orders must also expire upon the termination for any of the reasons listed in **Section 2.150** of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, shall remain in effect for the balance of the fiscal year for which they were issued.

#### **2.002 OPTIONS TO RENEW**

This Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. The Contract may be renewed for up to 2 additional 2 year periods.

#### **2.003 LEGAL EFFECT**

Contractor shall show acceptance of this Contract by signing two copies of the Contract and returning them to the Contract Administrator. The Contractor shall not proceed with the performance of the work to be done under the Contract, including the purchase of necessary materials, until both parties have signed the Contract to show acceptance of its terms, and the Contractor receives a contract release/purchase order that authorizes and defines specific performance requirements.

Except as otherwise agreed in writing by the parties, the State assumes no liability for costs incurred by Contractor or payment under this Contract, until Contractor is notified in writing that this Contract (or Change Order) has been approved by the State Administrative Board (if required), approved and signed by all the parties, and a Purchase Order against the Contract has been issued.

#### **2.004 ATTACHMENTS & EXHIBITS**

All Attachments and Exhibits affixed to any and all Statement(s) of Work, or appended to or referencing this Contract, are incorporated in their entirety and form part of this Contract.

#### **2.005 ORDERING**

The State will issue a written Purchase Order, Blanket Purchase Order, Direct Voucher or Procurement Card Order, which must be approved by the Contract Administrator or the Contract Administrator's designee, to order any Services/Deliverables under this Contract. All orders are subject to the terms and conditions of this Contract. No additional terms and conditions contained on either a Purchase Order or Blanket Purchase Order apply unless they are also specifically contained in that Purchase Order or Blanket Purchase Order's accompanying Statement of Work. Exact quantities to be purchased are unknown; however, the Contractor will be required to furnish all such materials and services as may be ordered during the Contract period. Quantities specified, if any, are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities.

#### **2.006 ORDER OF PRECEDENCE**

The Contract, including any Statements of Work and Exhibits, to the extent not contrary to the Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to the subject matter and as additional terms and conditions on the purchase order must apply as limited by **Section 2.005**.

In the event of any inconsistency between the terms of the Contract and a Statement of Work, the terms of the Statement of Work will take precedence (as to that Statement of Work only); provided, however, that a Statement of Work may not modify or amend the terms of the Contract, which may be modified or amended only by a formal Contract amendment.



## **2.007 HEADINGS**

Captions and headings used in the Contract are for information and organization purposes. Captions and headings, including inaccurate references, do not, in any way, define or limit the requirements or terms and conditions of the Contract.

## **2.008 FORM, FUNCTION & UTILITY**

If the Contract is for use of more than one State agency and if the Deliverable/Service does not meet the form, function, and utility required by that State agency, that agency may, subject to State purchasing policies, procure the Deliverable/Service from another source.

## **2.009 REFORMATION AND SEVERABILITY**

Each provision of the Contract is severable from all other provisions of the Contract and, if one or more of the provisions of the Contract is declared invalid, the remaining provisions of the Contract remain in full force and effect.

## **2.010 Consents and Approvals**

Except as expressly provided otherwise in the Contract, if either party requires the consent or approval of the other party for the taking of any action under the Contract, the consent or approval must be in writing and must not be unreasonably withheld or delayed.

## **2.011 NO WAIVER OF DEFAULT**

If a party fails to insist upon strict adherence to any term of the Contract then the party has not waived the right to later insist upon strict adherence to that term, or any other term, of the Contract.

## **2.012 SURVIVAL**

Any provisions of the Contract that impose continuing obligations on the parties, including without limitation the parties' respective warranty, indemnity and confidentiality obligations, survive the expiration or termination of the Contract for any reason. Specific references to survival in the Contract are solely for identification purposes and not meant to limit or prevent the survival of any other section

## **2.020 Contract Administration**

### **2.021 ISSUING OFFICE**

This Contract is issued by the Department of Technology Management and Budget, Procurement and MSHDA (collectively, including all other relevant State of Michigan departments and agencies, the "State"). Procurement is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. The Procurement Contract Administrator for this Contract is:

Mark Lawrence, Buyer  
Procurement  
Department of Technology Management and Budget  
Mason Bldg., 2<sup>nd</sup> Floor  
PO Box 30026  
Lansing, MI 48909  
Lawrencem1@michigan.gov  
517-241-1640

### **2.022 CONTRACT COMPLIANCE INSPECTOR**

The Director of Procurement directs the person named below, or his or her designee, to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. **Monitoring Contract activities does not imply the authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of the Contract. Procurement is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract.**



TBD

## **2.023 PROJECT MANAGER**

The following individual will oversee the project:

Tracie Mansberger  
DTMB Agency Services

Lisa Dove  
MSHDAT

## **2.024 CHANGE REQUESTS**

The State reserves the right to request from time to time any changes to the requirements and specifications of the Contract and the work to be performed by the Contractor under the Contract. During the course of ordinary business, it may become necessary for the State to discontinue certain business practices or create Additional Services/Deliverables. At a minimum, to the extent applicable, the State would like the Contractor to provide a detailed outline of all work to be done, including tasks necessary to accomplish the Services/Deliverables, timeframes, listing of key personnel assigned, estimated hours for each individual per task, and a complete and detailed cost justification.

If the State requests or directs the Contractor to perform any Services/Deliverables that are outside the scope of the Contractor's responsibilities under the Contract ("New Work"), the Contractor must notify the State promptly, and before commencing performance of the requested activities, that it believes the requested activities are New Work. If the Contractor fails to notify the State before commencing performance of the requested activities, any such activities performed before the Contractor gives notice shall be conclusively considered to be in-scope Services/Deliverables, not New Work.

If the State requests or directs the Contractor to perform any services or provide deliverables that are consistent with and similar to the Services/Deliverables being provided by the Contractor under the Contract, but which the Contractor reasonably and in good faith believes are not included within the Statements of Work, then before performing such services or providing such deliverables, the Contractor shall notify the State in writing that it considers the services or deliverables to be an Additional Service/Deliverable for which the Contractor should receive additional compensation. If the Contractor does not so notify the State, the Contractor shall have no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable. If the Contractor does so notify the State, then such a service or deliverable shall be governed by the Change Request procedure in this Section.

In the event prices or service levels are not acceptable to the State, the Additional Services or New Work shall be subject to competitive bidding based upon the specifications.

### **(1) Change Request at State Request**

If the State should require Contractor to perform New Work, Additional Services or make changes to the Services that would affect the Contract completion schedule or the amount of compensation due Contractor (a "Change"), the State shall submit a written request for Contractor to furnish a proposal for carrying out the requested Change (a "Change Request").

### **(2) Contractor Recommendation for Change Requests:**

Contractor shall be entitled to propose a Change to the State, on its own initiative, should it be of the opinion that this would benefit the Contract.

### **(3) Upon receipt of a Change Request or on its own initiative, Contractor shall examine the implications of the requested Change on the technical specifications, Contract schedule and price of the Deliverables and Services and shall submit to the State without undue delay a written proposal for carrying out the Change. Contractor's proposal will include any associated changes in the technical specifications, Contract schedule and price and method of pricing of the Services. If the Change is to be performed on a time and materials basis, the Amendment Labor Rates shall apply to the provision of such Services. If Contractor provides a written proposal and should Contractor be of the opinion that a requested Change is not to be**



recommended, it shall communicate its opinion to the State but shall nevertheless carry out the Change as specified in the written proposal if the State directs it to do so.

- (4) By giving Contractor written notice within a reasonable time, the State must be entitled to accept a Contractor proposal for Change, to reject it, or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice must be prepared and issued under this Contract, describing the Change and its effects on the Services and any affected components of this Contract (a "Contract Change Notice").
- (5) No proposed Change must be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Technology Management and Budget, Procurement.
- (6) If the State requests or directs the Contractor to perform any activities that Contractor believes constitute a Change, the Contractor must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of this Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

## **2.025 NOTICES**

Any notice given to a party under the Contract must be deemed effective, if addressed to the party as addressed below, upon: (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this Section; (iii) the third Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

State:

State of Michigan  
Procurement  
Attention: Mark Lawrence, Buyer  
PO Box 30026  
530 West Allegan  
Lansing, Michigan 48909

Contractor:

Emphasys Software  
Attn. Larry Huckle, General Manager  
3890 Charlexoix Ave., Ste. 370  
Petoskey, Mi. 49770

Either party may change its address where notices are to be sent by giving notice according to this Section.

## **2.026 BINDING COMMITMENTS**

Representatives of Contractor must have the authority to make binding commitments on Contractor's behalf within the bounds set forth in the Contract. Contractor may change the representatives from time to time upon written notice.

## **2.027 RELATIONSHIP OF THE PARTIES**

The relationship between the State and Contractor is that of client and independent contractor. No agent, employee, or servant of Contractor or any of its Subcontractors must be or must be deemed to be an employee, agent or servant of the State for any reason. Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and Subcontractors during the performance of the Contract.

## **2.028 COVENANT OF GOOD FAITH**

Each party must act reasonably and in good faith. Unless stated otherwise in the Contract, the parties will not unreasonably delay, condition or withhold the giving of any consent, decision or approval that is either



requested or reasonably required of them in order for the other party to perform its responsibilities under the Contract.

### **2.029 ASSIGNMENTS**

Neither party may assign the Contract, or assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as the affiliate is adequately capitalized and can provide adequate assurances that the affiliate can perform the Contract. The State may withhold consent from proposed assignments, subcontracts, or novations when the transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

Contractor may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. If the State permits an assignment, the Contractor is not relieved of its responsibility to perform any of its contractual duties, and the requirement under the Contract that all payments must be made to one entity continues.

If the Contractor intends to assign the contract or any of the Contractor's rights or duties under the Contract, the Contractor must notify the State in writing at least 90 days before the assignment. The Contractor also must provide the State with adequate information about the assignee within a reasonable amount of time before the assignment for the State to determine whether to approve the assignment.

### **2.030 General Provisions**

#### **2.031 MEDIA RELEASES**

News releases (including promotional literature and commercial advertisements) pertaining to the RFP and Contract or project to which it relates shall not be made without prior written State approval, and then only in accordance with the explicit written instructions from the State. No results of the activities associated with the RFP and Contract are to be released without prior written approval of the State and then only to persons designated.

#### **2.032 CONTRACT DISTRIBUTION**

Procurement retains the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by Procurement.

#### **2.033 PERMITS**

Contractor must obtain and pay any associated costs for all required governmental permits, licenses and approvals for the delivery, installation and performance of the Services. The State must pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

#### **2.034 WEBSITE INCORPORATION**

The State is not bound by any content on the Contractor's website, even if the Contractor's documentation specifically referenced that content and attempts to incorporate it into any other communication, unless the State has actual knowledge of the content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representative of the State.

#### **2.035 FUTURE BIDDING PRECLUSION**

Contractor acknowledges that, to the extent this Contract involves the creation, research, investigation or generation of a future RFP; it may be precluded from bidding on the subsequent RFP. The State reserves the right to disqualify any bidder if the State determines that the bidder has used its position (whether as an incumbent Contractor, or as a Contractor hired to assist with the RFP development, or as a Contractor offering free assistance) to gain a competitive advantage on the RFP

#### **2.036 FREEDOM OF INFORMATION**



All information in any proposal submitted to the State by Contractor and this Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 Public Act No. 442, as amended, MCL 15.231, et seq (the "FOIA").

### **2.037 DISASTER RECOVERY**

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as so mandated by Federal disaster response requirements, Contractor personnel dedicated to providing Services/Deliverables under this Contract will provide the State with priority service for repair and work around in the event of a natural or man-made disaster.

## **2.040 Financial Provisions**

### **2.041 FIXED PRICES FOR SERVICES/DELIVERABLES**

Each Statement of Work or Purchase Order issued under this Contract shall specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

### **2.042 ADJUSTMENTS FOR REDUCTIONS IN SCOPE OF SERVICES/DELIVERABLES**

If the scope of the Services/Deliverables under any Statement of Work issued under this Contract is subsequently reduced by the State, the parties shall negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope.

### **2.043 SERVICES/DELIVERABLES COVERED**

For all Services/Deliverables to be provided by Contractor (and its Subcontractors, if any) under this Contract, the State shall not be obligated to pay any amounts in addition to the charges specified in this Contract.

### **2.044 INVOICING AND PAYMENT – IN GENERAL**

- (a) Each Statement of Work issued under this Contract shall list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, equipment and commodities to be provided, and the associated payment milestones and payment amounts.
- (b) Each Contractor invoice will show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Invoices for Services performed on a time and materials basis will show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 1.600**.
- (c) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 Public Act No. 279, MCL 17.51 et seq., within 45 days after receipt, provided the State determines that the invoice was properly rendered.
- (d) All invoices should reflect actual work done. Specific details of invoices and payments will be agreed upon between the Contract Administrator and the Contractor after the proposed Contract Agreement has been signed and accepted by both the Contractor and the Director of Procurement, Department of Technology Management & Budget. This activity will occur only upon the specific written direction from Procurement.

The specific payment schedule for any Contract(s) entered into, as the State and the Contractor(s) will mutually agree upon. The schedule should show payment amount and should reflect actual work done by the payment dates, less any penalty cost charges accrued by those dates. As a general policy statements shall be forwarded to the designated representative by the 15<sup>th</sup> day of the following month.

The Government may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after



negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

#### **2.045 PRO-RATION**

To the extent there are any Services that are to be paid for on a monthly basis, the cost of such Services shall be pro-rated for any partial month.

#### **2.046 ANTITRUST ASSIGNMENT**

The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

#### **2.047 FINAL PAYMENT**

The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one party against the other arising from unsettled claims or failure by a party to comply with this Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under this Contract shall constitute a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

#### **2.048 ELECTRONIC PAYMENT REQUIREMENT**

Electronic transfer of funds is required for payments on State Contracts. Contractors are required to register with the State electronically at <http://www.cpexpress.state.mi.us>. As stated in Public Act 431 of 1984, all contracts that the State enters into for the purchase of goods and services shall provide that payment will be made by electronic fund transfer (EFT).

### **2.050 Taxes**

#### **2.051 EMPLOYMENT TAXES**

Contractors are expected to collect and pay all applicable federal, state, and local employment taxes.

#### **2.052 SALES AND USE TAXES**

Contractors are required to be registered and to remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. Contractors that lack sufficient presence in Michigan to be required to register and pay tax must do so as a volunteer. This requirement extends to: (1) all members of any controlled group as defined in § 1563(a) of the Internal Revenue Code and applicable regulations of which the company is a member, and (2) all organizations under common control as defined in § 414(c) of the Internal Revenue Code and applicable regulations of which the company is a member that make sales at retail for delivery into the State are registered with the State for the collection and remittance of sales and use taxes. In applying treasury regulations defining "two or more trades or businesses under common control" the term "organization" means sole proprietorship, a partnership (as defined in § 701(a) (2) of the Internal Revenue Code), a trust, an estate, a corporation, or a limited liability company.

### **2.060 Contract Management**

**2.061 CONTRACTOR PERSONNEL QUALIFICATIONS**

All persons assigned by Contractor to the performance of Services under this Contract must be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Subcontractor) and must be fully qualified to perform the work assigned to them. Contractor must include a similar provision in any subcontract entered into with a Subcontractor. For the purposes of this Contract, independent contractors engaged by Contractor solely in a staff augmentation role must be treated by the State as if they were employees of Contractor for this Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent contractor relationship.

**2.062 CONTRACTOR KEY PERSONNEL**

- (a) The Contractor must provide the Contract Compliance Inspector with the names of the Key Personnel.
- (b) Key Personnel must be dedicated as defined in the Statement of Work to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.
- (c) The State will have the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, will introduce the individual to the appropriate State representatives, and will provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection.
- (d) Contractor must not remove any Key Personnel from their assigned roles or the Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). Unauthorized Removals does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, and resignation or for cause termination of the Key Personnel's employment. Unauthorized Removals does not include replacing Key Personnel because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides 30 days of shadowing unless parties agree to a different time period. The Contractor with the State must review any Key Personnel replacements, and appropriate transition planning will be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its termination and cancellation rights.
- (e) The Contractor must notify the Contract Compliance Inspector and the Contract Administrator at least 10 business days before redeploying non-Key Personnel, who are dedicated to primarily to the Project, to other projects. If the State does not object to the redeployment by its scheduled date, the Contractor may then redeploy the non-Key Personnel.

**2.063 RE-ASSIGNMENT OF PERSONNEL AT THE STATE'S REQUEST**

The State reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the State, to be unacceptable. The State's request must be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request must be based on legitimate, good faith reasons. Replacement personnel for the removed person must be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any incident with removed personnel results in delay not reasonably anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted for a time as agreed to by the parties.

**2.064 CONTRACTOR PERSONNEL LOCATION**

All staff assigned by Contractor to work on the Contract will perform their duties either primarily at Contractor's offices and facilities or at State facilities. Without limiting the generality of the foregoing, Key Personnel will, at



a minimum, spend at least the amount of time on-site at State facilities as indicated in the applicable Statement of Work. Subject to availability, selected Contractor personnel may be assigned office space to be shared with State personnel.

#### **2.065 CONTRACTOR IDENTIFICATION**

Contractor employees must be clearly identifiable while on State property by wearing a State-issued badge, as required. Contractor employees are required to clearly identify themselves and the company they work for whenever making contact with State personnel by telephone or other means.

#### **2.066 COOPERATION WITH THIRD PARTIES**

Contractor agrees to cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other contractors including the State's Quality Assurance personnel. As reasonably requested by the State in writing, the Contractor will provide to the State's agents and other contractors reasonable access to Contractor's Project personnel, systems and facilities to the extent the access relates to activities specifically associated with this Contract and will not interfere or jeopardize the safety or operation of the systems or facilities. The State acknowledges that Contractor's time schedule for the Contract is very specific and agrees not to unnecessarily or unreasonably interfere with, delay or otherwise impeded Contractor's performance under this Contract with the requests for access.

#### **2.067 CONTRACT MANAGEMENT RESPONSIBILITIES**

Contractor shall be responsible for all acts and omissions of its employees, as well as the acts and omissions of any other personnel furnished by Contractor to perform the Services. Contractor shall have overall responsibility for managing and successfully performing and completing the Services/Deliverables, subject to the overall direction and supervision of the State and with the participation and support of the State as specified in this Contract. Contractor's duties will include monitoring and reporting the State's performance of its participation and support responsibilities (as well as Contractor's own responsibilities) and providing timely notice to the State in Contractor's reasonable opinion if the State's failure to perform its responsibilities in accordance with the Project Plan is likely to delay the timely achievement of any Contract tasks.

The Contractor will provide the Services/Deliverables directly or through its affiliates, subsidiaries, subcontractors or resellers. Regardless of the entity providing the Service/Deliverable, the Contractor will act as a single point of contact coordinating these entities to meet the State's need for Services/Deliverables. Nothing in this Contract, however, shall be construed to authorize or require any party to violate any applicable law or regulation in its performance of this Contract.

#### **2.068 CONTRACTOR RETURN OF STATE EQUIPMENT/RESOURCES**

The Contractor must return to the State any State-furnished equipment, facilities and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

#### **2.070 Subcontracting by Contractor**

#### **2.071 CONTRACTOR FULL RESPONSIBILITY**

Contractor shall have full responsibility for the successful performance and completion of all of the Services and Deliverables. The State will consider Contractor to be the sole point of contact with regard to all contractual matters under this Contract, including payment of any and all charges for Services and Deliverables.

#### **2.072 STATE CONSENT TO DELEGATION**

Contractor shall not delegate any duties under this Contract to a Subcontractor unless the Department of Technology Management and Budget, Procurement has given written consent to such delegation. The State shall have the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good faith reasons. Replacement Subcontractor(s) for the removed



Subcontractor shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLA for the affected Work will not be counted for a time agreed upon by the parties.

### **2.073 SUBCONTRACTOR BOUND TO CONTRACT**

In any subcontracts entered into by Contractor for the performance of the Services, Contractor shall require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of this Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by this Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any Subcontractor will be the responsibility of Contractor, and Contractor shall remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor shall make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under this Contract shall not relieve Contractor of any obligations or performance required under this Contract. A list of the Subcontractors, if any, approved by the State as of the execution of this Contract, together with a copy of the applicable subcontract is attached.

### **2.074 FLOW DOWN**

Except where specifically approved in writing by the State on a case-by-case basis, Contractor shall flow down the obligations in **Sections 2.031, 2.060, 2.100, 2.110, 2.120, 2.130, and 2.200** in all of its agreements with any Subcontractors.

### **2.075 COMPETITIVE SELECTION**

The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the Contract.

### **2.080 State Responsibilities**

### **2.081 EQUIPMENT**

The State will provide only the equipment and resources identified in the Statements of Work and other Contract Exhibits.

### **2.082 FACILITIES**

The State must designate space as long as it is available and as provided in the Statement of Work, to house the Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). The Contractor must have reasonable access to, and unless agreed otherwise by the parties in writing must observe and comply with all rules and regulations relating to each of the State Facilities (including hours of operation) used by the Contractor in the course of providing the Services. Contractor agrees that it will not, without the prior written consent of the State, use any State Facilities or access any State information systems provided for the Contractor's use, or to which the Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.

### **2.090 Security**

### **2.091 BACKGROUND CHECKS**

On a case-by-case basis, the State may investigate the Contractor's personnel before they may have access to State facilities and systems. The scope of the background check is at the discretion of the State and the results will be used to determine Contractor personnel eligibility for working within State facilities and systems.



The investigations will include Michigan State Police Background checks (ICHAT) and may include the National Crime Information Center (NCIC) Finger Prints. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Finger Print Check. Any request for background checks will be initiated by the State and will be reasonably related to the type of work requested.

All Contractor personnel will also be expected to comply with the State's security and acceptable use policies for State IT equipment and resources. See <http://www.michigan.gov/dit>. Furthermore, Contractor personnel will be expected to agree to the State's security and acceptable use policies before the Contractor personnel will be accepted as a resource to perform work for the State. It is expected the Contractor will present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff will be expected to comply with all Physical Security procedures in place within the facilities where they are working.

## **2.092 SECURITY BREACH NOTIFICATION**

If the Contractor breaches this Section, the Contractor must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor must report to the State in writing any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within 10 days of becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.

## **2.093 PCI DATA SECURITY REQUIREMENTS**

Not applicable.

### **2.100 Confidentiality**

#### **2.101 CONFIDENTIALITY**

Contractor and the State each acknowledge that the other possesses and will continue to possess confidential information that has been developed or received by it. As used in this Section, "Confidential Information" of Contractor must mean all non-public proprietary information of Contractor (other than Confidential Information of the State as defined below), which is marked confidential, restricted, proprietary, or with a similar designation. "Confidential Information" of the State must mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State under applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the State under its performance under this Contract, is marked as confidential, proprietary or with a similar designation by the State. "Confidential Information" excludes any information (including this Contract) that is publicly available under the Michigan FOIA.

#### **2.102 PROTECTION AND DESTRUCTION OF CONFIDENTIAL INFORMATION**

The State and Contractor will each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by this Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party will limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under this Contract, (B) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect the Confidential Information from unauthorized use or disclosure.



Promptly upon termination or cancellation of the Contract for any reason, Contractor must certify to the State that Contractor has destroyed all State Confidential Information.

### **2.103 EXCLUSIONS**

Notwithstanding the foregoing, the provisions in this Section will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose the information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of this Section will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose the Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

### **2.104 NO IMPLIED RIGHTS**

Nothing contained in this Section must be construed as obligating a party to disclose any particular Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any right or license to the Confidential Information of the other party.

### **2.105 RESPECTIVE OBLIGATIONS**

The parties' respective obligations under this Section must survive the termination or expiration of this Contract for any reason.

#### **2.110 Records and Inspections**

### **2.111 INSPECTION OF WORK PERFORMED**

The State's authorized representatives must at all reasonable times and with 10 days prior written request, have the right to enter Contractor's premises, or any other places, where the Services are being performed, and must have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. Upon 10 Days prior written notice and at all reasonable times, the State's representatives must be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that the access will not reasonably interfere or jeopardize the safety, security or operation of the systems or facilities. Contractor must provide all reasonable facilities and assistance for the State's representatives.

### **2.112 EXAMINATION OF RECORDS**

For seven years after the Contractor provides any work under this Contract (the "Audit Period"), the State may examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the Contract and with applicable laws and rules. The State must notify the Contractor 20 days before examining the Contractor's books and records. The State does not have the right to review any information deemed confidential by the Contractor to the extent access would require the confidential information to become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.

### **2.113 RETENTION OF RECORDS**

Contractor must maintain at least until the end of the Audit Period all pertinent financial and accounting records (including time sheets and payroll records, and information pertaining to the Contract and to the Services, equipment, and commodities provided under the Contract) pertaining to the Contract according to generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records must be made available, upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records must be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.



### **2.114 AUDIT RESOLUTION**

If necessary, the Contractor and the State will meet to review each audit report promptly after issuance. The Contractor will respond to each audit report in writing within 30 days from receipt of the report, unless a shorter response time is specified in the report. The Contractor and the State must develop, agree upon and monitor an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in the audit report.

### **2.115 ERRORS**

If the audit demonstrates any errors in the documents provided to the State, then the amount in error must be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four invoices. If a balance remains after four invoices, then the remaining amount will be due as a payment or refund within 45 days of the last quarterly invoice that the balance appeared on or termination of the contract, whichever is earlier.

In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than 10%, then the Contractor must pay all of the reasonable costs of the audit.

### **2.120 Warranties**

#### **2.121 WARRANTIES AND REPRESENTATIONS**

The Contractor represents and warrants:

- (a) It is capable in all respects of fulfilling and must fulfill all of its obligations under this Contract. The performance of all obligations under this Contract must be provided in a timely, professional, and workman-like manner and must meet the performance and operational standards required under this Contract.
- (b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.
- (c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under neither this Contract, nor their use by the State will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.
- (d) If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to the items in this Contract, Contractor must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.
- (e) The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.
- (f) It is qualified and registered to transact business in all locations where required.
- (g) Neither the Contractor nor any Affiliates, nor any employee of either, has, must have, or must acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor must notify the State about the nature of the conflict or appearance of impropriety within two days of learning about it.
- (h) Neither Contractor nor any Affiliates, nor any employee of either has accepted or must accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor must not attempt to influence any State employee by the direct or indirect offer of anything of value.
- (i) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or the Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.



- (j) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other bidder; and no attempt was made by Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.
- (k) All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the RFP or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by the financial statements, reports, other information. Since the respective dates or periods covered by the financial statements, reports, or other information, there have been no material adverse changes in the business, properties, financial condition, or results of operations of Contractor.
- (l) All written information furnished to the State by or for the Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make the information not misleading.
- (m) It is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State or the department within the previous five years for the reason that Contractor failed to perform or otherwise breached an obligation of the contract.
- (n) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after contract award, the Contractor is required to report those changes immediately to the Department of Technology Management and Budget, Procurement.

#### **2.122 WARRANTY OF MERCHANTABILITY**

Goods provided by Contractor under this agreement shall be merchantable. All goods provided under this Contract shall be of good quality within the description given by the State, shall be fit for their ordinary purpose, shall be adequately contained and packaged within the description given by the State, shall conform to the agreed upon specifications, and shall conform to the affirmations of fact made by the Contractor or on the container or label.

#### **2.123 WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE**

When the Contractor has reason to know or knows any particular purpose for which the goods are required, and the State is relying on the Contractor's skill or judgment to select or furnish suitable goods, there is a warranty that the goods are fit for such purpose.

#### **2.124 WARRANTY OF TITLE**

Not applicable.

#### **2.125 EQUIPMENT WARRANTY**

To the extent Contractor is responsible under this Contract for maintaining equipment/system(s), Contractor represents and warrants that it will maintain the equipment/system(s) in good operating condition and will undertake all repairs and preventive maintenance according to the applicable manufacturer's recommendations for the period specified in this Contract.

The Contractor represents and warrants that the equipment/system(s) are in good operating condition and operates and performs to the requirements and other standards of performance contained in this Contract, when installed, at the time of Final Acceptance by the State, and for a period of (1) one year commencing upon the first day following Final Acceptance.

Per service levels defined in Article 1 Section 1.104b, the Contractor must adjust, repair or replace all equipment that is defective or not performing in compliance with the Contract. The Contractor must assume all costs for replacing parts or units and their installation including transportation and delivery fees, if any.

The Contractor must provide a toll-free telephone number to allow the State to report equipment failures and problems to be remedied by the Contractor.



The Contractor agrees that all warranty service it provides under this Contract must be performed by Original Equipment Manufacturer (OEM) trained, certified and authorized technicians.

The Contractor is the sole point of contact for warranty service. The Contractor warrants that it will pass through to the State any warranties obtained or available from the original equipment manufacturer, including any replacement, upgraded, or additional equipment warranties.

#### **2.126 EQUIPMENT TO BE NEW**

If applicable, all equipment provided under this Contract by Contractor shall be new where Contractor has knowledge regarding whether the equipment is new or assembled from new or serviceable used parts that are like new in performance or has the option of selecting one or the other. Equipment that is assembled from new or serviceable used parts that are like new in performance is acceptable where Contractor does not have knowledge or the ability to select one or other, unless specifically agreed otherwise in writing by the State.

#### **2.127 PROHIBITED PRODUCTS**

The State will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against the Contract, shall be considered default by the Contractor of the terms and conditions of the Contract and may result in cancellation of the Contract by the State. The brand and product number offered for all items shall remain consistent for the term of the Contract, unless Procurement has approved a change order pursuant to **Section 2.024**.

#### **2.128 CONSEQUENCES FOR BREACH**

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in this section, the breach may be considered as a default in the performance of a material obligation of this Contract.

#### **2.130 Insurance**

##### **2.131 LIABILITY INSURANCE**

The Contractor must provide proof of the minimum levels of insurance coverage as indicated below. The insurance must protect the State from claims that may arise out of or result from the Contractor's performance of services under the terms of this Contract, whether the services are performed by the Contractor, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

The Contractor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents for recovery of damages to the extent these damages are covered by the insurance policies the Contractor is required to maintain under this Contract.

All insurance coverage provided relative to this Contract/Purchase Order is PRIMARY and NON-CONTRIBUTING to any comparable liability insurance (including self-insurances) carried by the State.

The insurance must be written for not less than any minimum coverage specified in this Contract or required by law, whichever is greater.

The insurers selected by Contractor must have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if the ratings are no longer available, with a comparable rating from a recognized insurance rating agency. All policies of insurance required in this Contract must be issued by companies that have been approved to do business in the State.

See [www.michigan.gov/dleg](http://www.michigan.gov/dleg).

Where specific limits are shown, they are the minimum acceptable limits. If Contractor's policy contains higher limits, the State must be entitled to coverage to the extent of the higher limits.

The Contractor is required to pay for and provide the type and amount of insurance checked ☒ below:

- ☒ 1. Commercial General Liability with the following minimum coverage:  
\$2,000,000 General Aggregate Limit other than Products/Completed Operations  
\$2,000,000 Products/Completed Operations Aggregate Limit



\$1,000,000 Personal & Advertising Injury Limit  
\$1,000,000 Each Occurrence Limit

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSURED on the Commercial General Liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

☒ 2. If a motor vehicle is used to provide services or products under this Contract, the Contractor must have vehicle liability insurance on any auto including owned, hired and non-owned vehicles used in Contractor's business for bodily injury and property damage as required by law.

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSURED on the vehicle liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

☒ 3. Workers' compensation coverage must be provided according to applicable laws governing the employees and employers work activities in the state of the Contractor's domicile. If a self-insurer provides the applicable coverage, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Any certificates of insurance received must also provide a list of states where the coverage is applicable.

The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company. This provision must not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

☒ 4. Employers liability insurance with the following minimum limits:  
\$100,000 each accident  
\$100,000 each employee by disease  
\$500,000 aggregate disease

### **2.132 SUBCONTRACTOR INSURANCE COVERAGE**

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor must require all of its Subcontractors under this Contract to purchase and maintain the insurance coverage as described in this Section for the Contractor in connection with the performance of work by those Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor's insurance on the coverage required in this Section. Subcontractor(s) must fully comply with the insurance coverage required in this Section. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

### **2.133 CERTIFICATES OF INSURANCE AND OTHER REQUIREMENTS**

Contractor must furnish to DTMB Procurement, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). The Certificate must be on the standard "accord" form or equivalent. **The Contract Number or the Purchase Order Number must be shown on the Certificate Of Insurance To Assure Correct Filing.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) must contain a provision indicating that coverage afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without 30 days prior written notice, except for 10 days for non-payment of premium, having been given to the Director of Procurement, Department of Technology Management and Budget. The notice must include the Contract or Purchase Order number affected. Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers and employees are listed as additional insured under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the



State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

The Contractor must maintain all required insurance coverage throughout the term of the Contract and any extensions and, in the case of claims-made Commercial General Liability policies, must secure tail coverage for at least three years following the expiration or termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and must not be construed; to limit any liability or indemnity of Contractor under this Contract to any indemnified party or other persons. Contractor is responsible for all deductibles with regard to the insurance. If the Contractor fails to pay any premium for required insurance as specified in this Contract, or if any insurer cancels or significantly reduces any required insurance as specified in this Contract without the State's written consent, then the State may, after the State has given the Contractor at least 30 days written notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Contractor, or the Contractor must pay that cost upon demand by the State.

## **2.140 Indemnification**

### **2.141 GENERAL INDEMNIFICATION**

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractor in the performance of this Contract and that are attributable to the negligence or ☐ tortious acts of the Contractor or any of its subcontractors, or by anyone else for whose acts any of them may be liable.

### **2.142 CODE INDEMNIFICATION**

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from any claim, loss, or expense arising from Contractor's breach of the No Surreptitious Code Warranty.

### **2.143 EMPLOYEE INDEMNIFICATION**

In any claims against the State of Michigan, its departments, divisions, agencies, sections, commissions, officers, employees and agents, by any employee of the Contractor or any of its subcontractors, the indemnification obligation under the Contract must not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefit acts or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in provisions, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

### **2.144 PATENT/COPYRIGHT INFRINGEMENT INDEMNIFICATION**

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that the action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or the operation of the equipment, software, commodity or service, or the use or reproduction of any documentation provided with the equipment, software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

In addition, should the equipment, software, commodity, or service, or its operation, become or in the State's or Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor must at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if the option is not reasonably available to the Contractor, (ii) replace or modify to the State's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if the option is not reasonably available to Contractor, (iii)



accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

#### **2.145 CONTINUATION OF INDEMNIFICATION OBLIGATIONS**

The Contractor's duty to indemnify under this Section continues in full force and effect, notwithstanding the expiration or early cancellation of the Contract, with respect to any claims based on facts or conditions that occurred before expiration or cancellation.

#### **2.146 INDEMNIFICATION PROCEDURES**

The procedures set forth below must apply to all indemnity obligations under this Contract.

- (a) After the State receives notice of the action or proceeding involving a claim for which it will seek indemnification, the State must promptly notify Contractor of the claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify the Contractor relieves the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the failure. Within 10 days following receipt of written notice from the State relating to any claim, the Contractor must notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and before the State receiving Contractor's Notice of Election, the State is entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during that period.
- (b) If Contractor delivers a Notice of Election relating to any claim: (i) the State is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in the handling of the claim and to monitor and advise the State about the status and progress of the defense; (ii) the Contractor must, at the request of the State, demonstrate to the reasonable satisfaction of the State, the Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) the Contractor must periodically advise the State about the status and progress of the defense and must obtain the prior written approval of the State before entering into any settlement of the claim or ceasing to defend against the claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that portion of the claim involving the principles of Michigan governmental or public law. But the State may retain control of the defense and settlement of a claim by notifying the Contractor in writing within 10 days after the State's receipt of Contractor's information requested by the State under clause (ii) of this paragraph if the State determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the State the Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State under this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.
- (c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State may defend the claim in the manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor must promptly reimburse the State for all the reasonable costs and expenses.

#### **2.150 Termination/Cancellation**

#### **2.151 NOTICE AND RIGHT TO CURE**

If the Contractor breaches the contract, and the State in its sole discretion determines that the breach is curable, then the State will provide the Contractor with written notice of the breach and a time period (not less than 30 days) to cure the Breach. The notice of breach and opportunity to cure is inapplicable for successive or repeated breaches or if the State determines in its sole discretion that the breach poses a serious and



imminent threat to the health or safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

### **2.152 TERMINATION FOR CAUSE**

- (a) The State may terminate this contract, for cause, by notifying the Contractor in writing, if the Contractor (i) breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA), or (ii) fails to cure a breach within the time period specified in the written notice of breach provided by the State
- (b) If this Contract is terminated for cause, the Contractor must pay all costs incurred by the State in terminating this Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by this Contract from other sources. Re-procurement costs are not consequential, indirect or incidental damages, and cannot be excluded by any other terms otherwise included in this Contract, provided the costs are not in excess of 50% more than the prices for the Service/Deliverables provided under this Contract.
- (c) If the State chooses to partially terminate this Contract for cause, charges payable under this Contract will be equitably adjusted to reflect those Services/Deliverables that are terminated and the State must pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.
- (d) If the State terminates this Contract for cause under this Section, and it is determined, for any reason, that Contractor was not in breach of contract under the provisions of this section, that termination for cause must be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties must be limited to that otherwise provided in this Contract for a termination for convenience.

### **2.153 TERMINATION FOR CONVENIENCE**

The State may terminate this Contract for its convenience, in whole or part, if the State determines that a termination is in the State's best interest. Reasons for the termination must be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the Services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Services no longer practical or feasible, (c) unacceptable prices for Additional Services or New Work requested by the State, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate this Contract for its convenience, in whole or in part, by giving Contractor written notice at least 30 days before the date of termination. If the State chooses to terminate this Contract in part, the charges payable under this Contract must be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.

### **2.154 TERMINATION FOR NON-APPROPRIATION**

- (a) Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this Contract. If funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available, the State must terminate this Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The State must give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or the time as is available if the State receives notice of the final decision less than 30 days before the funding cutoff).
- (b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise unavailable, the State may, upon 30 days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in the manner and for the periods of time as the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of the reduction.



- (c) If the State terminates this Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor under this Section, the State must pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available. This Section will not preclude Contractor from reducing or stopping Services/Deliverables or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

#### **2.155 TERMINATION FOR CRIMINAL CONVICTION**

The State may terminate this Contract immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense related to a State, public or private Contract or subcontract.

#### **2.156 TERMINATION FOR APPROVALS RESCINDED**

The State may terminate this Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the State will pay the Contractor for only the work completed to that point under the Contract. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in the written notice.

#### **2.157 RIGHTS AND OBLIGATIONS UPON TERMINATION**

- (a) If the State terminates this Contract for any reason, the Contractor must (1) stop all work as specified in the notice of termination, (2) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (3) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (4) transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which must be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of the items included compensation to Contractor for the provision of warranty services in respect of the materials), and (5) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.
- (b) If the State terminates this Contract before its expiration for its own convenience, the State must pay Contractor for all charges due for Services provided before the date of termination and, if applicable, as a separate item of payment under this Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor under this Contract, at the option of the State, becomes the State's property, and Contractor is entitled to receive equitable fair compensation for the Deliverables. Regardless of the basis for the termination, the State is not obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.

#### **2.158 RESERVATION OF RIGHTS**

Any termination of this Contract or any Statement of Work issued under it by a party must be with full reservation of, and without prejudice to, any rights or remedies otherwise available to the party with respect to any claims arising before or as a result of the termination.

#### **2.160 Termination by Contractor**

#### **2.161 TERMINATION BY CONTRACTOR**

If the State breaches the Contract, and the Contractor in its sole discretion determines that the breach is curable, then the Contractor will provide the State with written notice of the breach and a time period (not less than 30 days) to cure the breach. The Notice of Breach and opportunity to cure is inapplicable for successive and repeated breaches.



The Contractor may terminate this Contract if the State (i) materially breaches its obligation to pay the Contractor undisputed amounts due and owing under this Contract, (ii) breaches its other obligations under this Contract to an extent that makes it impossible or commercially impractical for the Contractor to perform the Services, or (iii) does not cure the breach within the time period specified in a written notice of breach. But the Contractor must discharge its obligations under **Section 2.160** before it terminates the Contract.

## **2.170 Transition Responsibilities**

### **2.171 CONTRACTOR TRANSITION RESPONSIBILITIES**

If the State terminates this contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State. If this Contract expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 60 days. These efforts must include, but are not limited to, those listed in **Sections 2.150**.

### **2.172 CONTRACTOR PERSONNEL TRANSITION**

The Contractor must work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties, to effect an orderly transition. The Contractor must allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by this Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor's subcontractors or contractors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the State to use the Services of Contractor's subcontractors or contractors. Contractor will notify all of Contractor's subcontractors of procedures to be followed during transition.

### **2.173 CONTRACTOR INFORMATION TRANSITION**

The Contractor agrees to provide reasonable detailed specifications for all Services/Deliverables needed by the State, or specified third party, to properly provide the Services/Deliverables required under this Contract. The Contractor will provide the State with asset management data generated from the inception of this Contract through the date on which this Contractor is terminated in a comma-delineated format unless otherwise requested by the State. The Contractor will deliver to the State any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by the State.

### **2.174 CONTRACTOR SOFTWARE TRANSITION**

The Contractor must reasonably assist the State in the recommendation of any Contractor software required to perform the Services/use the Deliverables under this Contract. This must include any documentation being used by the Contractor to perform the Services under this Contract. If the State transfers any software licenses to the Contractor, those licenses must, upon expiration of the Contract, transfer back to the State at their current revision level. Upon notification by the State, Contractor may be required to freeze all non-critical changes to Deliverables/Services.

### **2.175 TRANSITION PAYMENTS**

If the transition results from a termination for any reason, the termination provisions of this Contract must govern reimbursement. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after contract expiration that result from transition operations) at the rates agreed upon by the State. The Contractor will prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

### **2.176 STATE TRANSITION RESPONSIBILITIES**

In the event that this Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to reconcile all accounts between the State and the Contractor, complete any pending post-project reviews and perform any others obligations upon which the State and the Contractor agree.

- (a) Reconciling all accounts between the State and the Contractor;
- (b) Completing any pending post-project reviews.



## **2.180 Stop Work**

### **2.181 STOP WORK ORDERS**

The State may, at any time, by written stop work order to Contractor, require that Contractor stop all, or any part, of the work called for by the Contract for a period of up to 90 calendar days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order must be identified as a stop work order and must indicate that it is issued under this **Section 2.150**. Upon receipt of the stop work order, Contractor must immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State must either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.182**.

### **2.182 CANCELLATION OR EXPIRATION OF STOP WORK ORDER**

The Contractor must resume work if the State cancels a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract must be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within 30 calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment will conform to the requirements of **Section 2.024**.

### **2.183 ALLOWANCE OF CONTRACTOR COSTS**

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, the termination must be deemed to be a termination for convenience under **Section 2.153**, and the State will pay reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State is not liable to Contractor for loss of profits because of a stop work order issued under this Section.

## **2.190 Dispute Resolution**

### **2.191 IN GENERAL**

Any claim, counterclaim, or dispute between the State and Contractor arising out of or relating to the Contract or any Statement of Work must be resolved as follows. For all Contractor claims seeking an increase in the amounts payable to Contractor under the Contract, or the time for Contractor's performance, Contractor must submit a letter, together with all data supporting the claims, executed by Contractor's Contract Administrator or the Contract Administrator's designee certifying that (a) the claim is made in good faith, (b) the amount claimed accurately reflects the adjustments in the amounts payable to Contractor or the time for Contractor's performance for which Contractor believes the State is liable and covers all costs of every type to which Contractor is entitled from the occurrence of the claimed event, and (c) the claim and the supporting data are current and complete to Contractor's best knowledge and belief.

### **2.192 INFORMAL DISPUTE RESOLUTION**

- (a) All disputes between the parties must be resolved under the Contract Management procedures in this Contract. If the parties are unable to resolve any disputes after compliance with the processes, the parties must meet with the Director of Procurement, DTMB, or designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings, as follows:
- (1) The representatives of Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives must discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
  - (2) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract will be honored in order that each of the parties may be fully advised of the other's position.



- (3) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
- (4) Following the completion of this process within 60 calendar days, the Director of Procurement, DTMB, or designee, must issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute must be considered the State's final action and the exhaustion of administrative remedies.
- (b) This Section will not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under Section 2.193. The State will not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work under the Contract.

### **2.193 INJUNCTIVE RELIEF**

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 2.192** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is the that the damages to the party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

### **2.194 CONTINUED PERFORMANCE**

Each party agrees to continue performing its obligations under the Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment must not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in **Section 2.150**, as the case may be.

## **2.200 Federal and State Contract Requirements**

### **2.201 NONDISCRIMINATION**

In the performance of the Contract, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, and marital status, physical or mental disability. Contractor further agrees that every subcontract entered into for the performance of this Contract or any purchase order resulting from this Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., and any breach of this provision may be regarded as a material breach of the Contract.

### **2.202 UNFAIR LABOR PRACTICES**

Under 1980 PA 278, MCL 423.321, et seq., the State must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, after award of the Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.

### **2.203 WORKPLACE SAFETY AND DISCRIMINATORY HARASSMENT**

In performing Services for the State, the Contractor must comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor must comply with Civil Service regulations and any applicable agency rules provided to the Contractor. For Civil Service Rules, see <http://www.mi.gov/mdcs/0,1607,7-147-6877---,00.html>.



## **2.210 Governing Law**

### **2.211 GOVERNING LAW**

The Contract must in all respects be governed by, and construed according to, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of any other jurisdiction to the extent not inconsistent with, or pre-empted by federal law.

### **2.212 COMPLIANCE WITH LAWS**

Contractor shall comply with all applicable state, federal and local laws and ordinances in providing the Services/Deliverables.

### **2.213 JURISDICTION**

Any dispute arising from the Contract must be resolved in the State of Michigan. With respect to any claim between the parties, Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections it may have to the jurisdiction on the grounds of lack of personal jurisdiction of the court or the laying of venue of the court or on the basis of forum non conveniens or otherwise. Contractor agrees to appoint agents in the State of Michigan to receive service of process.

## **2.220 Limitation of Liability**

### **2.221 LIMITATION OF LIABILITY**

Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

The Contractor's liability for damages to the State is limited to 1 (one) times the value of this base contract. The foregoing limitation of liability does not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

The State's liability for damages to the Contractor is limited to the value of the Contract.

## **2.230 Disclosure Responsibilities**

### **2.231 DISCLOSURE OF LITIGATION**

Contractor must disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions, to which Contractor (or, to the extent Contractor is aware, any Subcontractor) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor by a governmental or public entity arising out of their business dealings with governmental or public entities. The Contractor must disclose in writing to the Contract Administrator any litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") within 30 days of its occurrence. Details of settlements that are prevented from disclosure by the terms of the settlement may be annotated. Information provided to the State from Contractor's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.

If any Proceeding disclosed to the State under this Section, or of which the State otherwise becomes aware, during the term of this Contract would cause a reasonable party to be concerned about:



- (a) the ability of Contractor (or a Subcontractor) to continue to perform this Contract according to its terms and conditions, or
- (b) whether Contractor (or a Subcontractor) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in the Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy, then the Contractor must provide the State all reasonable assurances requested by the State to demonstrate that:
  - (1) Contractor and its Subcontractors will be able to continue to perform this Contract and any Statements of Work according to its terms and conditions, and
  - (2) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.
- (c) Contractor must make the following notifications in writing:
  - (1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor must notify DTMB Procurement.
  - (2) Contractor must also notify DTMB Procurement within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.
  - (3) Contractor must also notify DTMB Purchase Operations within 30 days whenever changes to company affiliations occur.

### **2.232 CALL CENTER DISCLOSURE**

Contractor and/or all subcontractors involved in the performance of this Contract providing call or contact center services to the State must disclose the location of its call or contact center services to inbound callers. Failure to disclose this information is a material breach of this Contract.

### **2.233 BANKRUPTCY**

The State may, without prejudice to any other right or remedy, terminate this Contract, in whole or in part, and, at its option, may take possession of the "Work in Process" and finish the Works in Process by whatever appropriate method the State may deem expedient if:

- (a) the Contractor files for protection under the bankruptcy laws;
- (b) an involuntary petition is filed against the Contractor and not removed within 30 days;
- (c) the Contractor becomes insolvent or if a receiver is appointed due to the Contractor's insolvency;
- (d) the Contractor makes a general assignment for the benefit of creditors; or
- (e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can deliver the services under this Contract.

Contractor will fix appropriate notices or labels on the Work in Process to indicate ownership by the State. To the extent reasonably possible, materials and Work in Process must be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

### **2.240 Performance**

#### **2.241 TIME OF PERFORMANCE**

- (a) Contractor must use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables according to the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.
- (b) Without limiting the generality of **Section 2.241**, Contractor must notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.

If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must notify the State in a timely manner and must use commercially reasonable efforts to



perform its obligations according to the Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

#### **2.242 SERVICE LEVEL AGREEMENT (SLA)**

- (a) SLAs will be completed with the following operational considerations:
- (1) SLAs will not be calculated for individual Incidents where any event of Excusable Failure has been determined; Incident means any interruption in Services.
  - (2) SLAs will not be calculated for individual Incidents where loss of service is planned and where the State has received prior notification or coordination.
  - (3) SLAs will not apply if the applicable Incident could have been prevented through planning proposed by Contractor and not implemented at the request of the State. To invoke this consideration, complete documentation relevant to the denied planning proposal must be presented to substantiate the proposal.
  - (4) Time period measurements will be based on the time Incidents are received by the Contractor and the time that the State receives notification of resolution based on 24x7x365 time period, except that the time period measurement will be suspended based on the following:
    - (i) Time period(s) will not apply where Contractor does not have access to a physical State Location and where access to the State Location is necessary for problem identification and resolution.
    - (ii) Time period(s) will not apply where Contractor needs to obtain timely and accurate information or appropriate feedback and is unable to obtain timely and accurate information or appropriate feedback from the State.
- (b) Chronic Failure for any Service(s) will be defined as three unscheduled outage(s) or interruption(s) on any individual Service for the same reason or cause or if the same reason or cause was reasonably discoverable in the first instance over a rolling 30 day period. Chronic Failure will result in the State's option to terminate the effected individual Service(s) and procure them from a different contractor for the chronic location(s) with Contractor to pay the difference in charges for up to three additional months. The termination of the Service will not affect any tiered pricing levels.
- © Root Cause Analysis will be performed on any Business Critical outage(s) or outage(s) on Services when requested by the Contract Administrator. Contractor will provide its analysis within two weeks of outage(s) and provide a recommendation for resolution.
- (d) All decimals must be rounded to two decimal places with five and greater rounding up and four and less rounding down unless otherwise specified.

#### **2.243 LIQUIDATED DAMAGES**

The parties acknowledge that late or improper completion of the Work will cause loss and damage to the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result. Therefore, Contractor and the State agree that if there is late or improper completion of the Work and the State does not elect to exercise its rights under **Section 2.141**, the State is entitled to collect liquidated damages of \$100.00 per day, up to \$50,000.00, for each day Contractor fails to remedy the late or improper completion of the Work. Prior to collecting any liquidated damages under this contract, the State shall first provide the Contractor with written notice of its intent to do so and shall allow the contractor a period of no less than 30 days to remedy the perceived failure, and if such failure is cured no liquidated damages shall be due or collected.

#### **Unauthorized Removal of any Key Personnel**

It is acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **Section 2.141**, the State may assess liquidated damages against Contractor as specified below.

For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the liquidated damages amount is \$25,000.00 per individual if the Contractor identifies a replacement approved by



the State under **Section 2.060** and assigns the replacement to the Project to shadow the Key Personnel who is leaving for a period of at least 30 days before the Key Personnel's removal.

If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least 30 days, in addition to the \$25,000.00 liquidated damages for an Unauthorized Removal, Contractor must pay the amount of \$833.33 per day for each day of the 30 day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to \$25,000.00 maximum per individual. The total liquidated damages that may be assessed per Unauthorized Removal and failure to provide 30 days of shadowing must not exceed \$50,000.00 per individual.

#### **2.244 EXCUSABLE FAILURE**

Neither party will be liable for any default, damage or delay in the performance of its obligations under the Contract to the extent the default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military or otherwise), power failure, electrical surges or current fluctuations, lightning, earthquake, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or acts or omissions of common carriers, fire; riots, civil disorders; strikes or other labor disputes, embargoes; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of a party; provided the non-performing party and its Subcontractors are without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans.

If a party does not perform its contractual obligations for any of the reasons listed above, the non-performing party will be excused from any further performance of its affected obligation(s) for as long as the circumstances prevail. But the party must use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. A party must promptly notify the other party in writing immediately after the excusable failure occurs, and also when it abates or ends.

If any of the above-enumerated circumstances substantially prevent, hinder, or delay the Contractor's performance of the Services/provision of Deliverables for more than 10 Business Days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected Services/Deliverables from an alternate source, and the State is not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance continues; (b) the State may terminate any portion of the Contract so affected and the charges payable will be equitably adjusted to reflect those Services/Deliverables terminated; or (c) the State may terminate the affected Statement of Work without liability to Contractor as of a date specified by the State in a written notice of termination to the Contractor, except to the extent that the State must pay for Services/Deliverables provided through the date of termination.

The Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure occurrence or to payments for Services not rendered/Deliverables not provided as a result of the Excusable Failure condition. Defaults or delays in performance by Contractor which are caused by acts or omissions of its Subcontractors will not relieve Contractor of its obligations under the Contract except to the extent that a Subcontractor is itself subject to an Excusable Failure condition described above and Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

#### **2.250 Approval of Deliverables**

#### **2.251 DELIVERY OF DELIVERABLES**

A list of the Deliverables to be prepared and delivered by Contractor including, for each Deliverable, the scheduled delivery date and a designation of whether the Deliverable is a document ("Written Deliverable") or a Custom Software Deliverable is attached, if applicable. All Deliverables shall be completed and delivered for



State review and written approval and, where applicable, installed in accordance with the State-approved delivery schedule and any other applicable terms and conditions of this Contract.

Prior to delivering any Deliverable to the State, Contractor will first perform all required quality assurance activities, and, in the case of Custom Software Deliverables, System Testing to verify that the Deliverable is complete and in conformance with its specifications. Before delivering a Deliverable to the State, Contractor shall certify to the State that (1) it has performed such quality assurance activities, (2) it has performed any applicable testing, (3) it has corrected all material deficiencies discovered during such quality assurance activities and testing, (4) the Deliverable is in a suitable state of readiness for the State's review and approval, and (5) the Deliverable/Service has all Critical Security patches/updates applied.

In discharging its obligations under this Section, Contractor shall be at all times (except where the parties agree otherwise in writing) in compliance with Level 3 of the Software Engineering Institute's Capability Maturity Model for Software ("CMM Level 3") or its equivalent.

### **2.252 CONTRACTOR SYSTEM TESTING**

Contractor will be responsible for System Testing each Custom Software Deliverable in Contractor's development environment prior to turning over the Custom Software Deliverable to the State for User Acceptance Testing and approval. Contractor's System Testing shall include the following, at a minimum, plus any other testing required by CMM Level 3 or Contractor's system development methodology:

Contractor will be responsible for performing Unit Testing and incremental Integration Testing of the components of each Custom Software Deliverable.

Contractor's System Testing will also include Integration Testing of each Custom Software Deliverable to ensure proper inter-operation with all prior software Deliverables, interfaces and other components that are intended to inter-operate with such Custom Software Deliverable, and will include Regression Testing, and volume testing to ensure that the Custom Software Deliverables are able to meet the State's projected growth in the number and size of transactions to be processed by the Application and number of users, as such projections are set forth in the applicable Statement of Work.

Contractor's System Testing will also include Business Function Testing and Technical Testing of each Application in a simulated production environment. Business Function Testing will include testing of full work streams that flow through the Application as the Application will be incorporated within the State's computing environment. The State shall participate in and provide support for the Business Function Testing to the extent reasonably requested by Contractor. Within ten (10) days before the commencement of Business Function Testing pursuant to this Section, Contractor shall provide the State for State review and written approval Contractor's test plan for Business Function Testing.

Within five (5) Business Days following the completion of System Testing pursuant to this **Section**, Contractor shall provide to the State a testing matrix establishing that testing for each condition identified in the System Testing plans has been conducted and successfully concluded. To the extent that testing occurs on State premises, the State shall be entitled to observe or otherwise participate in testing under this Section as the State may elect.

### **2.253 APPROVAL OF DELIVERABLES, IN GENERAL**

All Deliverables (Written Deliverables and Custom Software Deliverables) require formal written approval by the State, in accordance with the following procedures. Formal approval by the State requires that the Deliverable be confirmed in writing by the State to meet its specifications, which, in the case of Custom Software Deliverables, will include the successful completion of State User Acceptance Testing, to be led by the State with the support and assistance of Contractor. The parties acknowledge that the approval process set forth herein will be facilitated by ongoing consultation between the parties, visibility of interim and intermediate Deliverables and collaboration on key decisions.



The State's obligation to comply with any State Review Period is conditioned on the timely delivery of Deliverables being reviewed. If Contractor fails to provide a Deliverable to the State in a timely manner, the State will nevertheless use commercially reasonable efforts to complete its review or testing within the applicable State Review Period.

Before commencement of its review or testing of a Deliverable, the State may inspect the Deliverable to confirm that all components of the Deliverable (e.g., software, associated documentation, and other materials) have been delivered. If the State determines that the Deliverable is incomplete, the State may refuse delivery of the Deliverable without performing any further inspection or testing of the Deliverable. Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable and the applicable certification by Contractor in accordance with this Section.

The State will approve in writing a Deliverable upon confirming that it conforms to and, in the case of a Custom Software Deliverable, performs in accordance with, its specifications without material deficiency. The State may, but shall not be required to, conditionally approve in writing a Deliverable that contains material deficiencies if the State elects to permit Contractor to rectify them post-approval. In any case, Contractor will be responsible for working diligently to correct within a reasonable time at Contractor's expense all deficiencies in the Deliverable that remain outstanding at the time of State approval.

If, after three (3) opportunities (the original and two repeat efforts), Contractor is unable to correct all deficiencies preventing State approval of a Deliverable, the State may: (i) demand that Contractor cure the failure and give Contractor additional time to cure the failure at the sole expense of Contractor; or (ii) keep this Contract in force and do, either itself or through other parties, whatever Contractor has failed to do, in which event Contractor shall bear any excess expenditure incurred by the State in so doing beyond the contract price for such Deliverable and will pay the State an additional sum equal to ten percent (10%) of such excess expenditure to cover the State's general expenses without the need to furnish proof in substantiation of such general expenses; or (iii) terminate this Contract for default, either in whole or in part by notice to Contractor (and without the need to afford Contractor any further opportunity to cure). Notwithstanding the foregoing, the State shall not use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.

The State, at any time and in its own discretion, may halt the UAT or approval process if such process reveals deficiencies in or problems with a Deliverable in a sufficient quantity or of a sufficient severity as to make the continuation of such process unproductive or unworkable. In such case, the State may return the applicable Deliverable to Contractor for correction and re-delivery prior to resuming the review or UAT process and, in that event, Contractor will correct the deficiencies in such Deliverable in accordance with the Contract, as the case may be.

Approval in writing of a Deliverable by the State shall be provisional; that is, such approval shall not preclude the State from later identifying deficiencies in, and declining to accept, a subsequent Deliverable based on or which incorporates or inter-operates with an approved Deliverable, to the extent that the results of subsequent review or testing indicate the existence of deficiencies in the subsequent Deliverable, or if the Application of which the subsequent Deliverable is a component otherwise fails to be accepted pursuant to **Section 2.080**.

#### **2.254 PROCESS FOR APPROVAL OF WRITTEN DELIVERABLES**

The State Review Period for Written Deliverables will be the number of days set forth in the applicable Statement of Work following delivery of the final version of the Written Deliverable (failing which the State Review Period, by default, shall be five (5) Business Days for Written Deliverables of one hundred (100) pages or less and ten (10) Business Days for Written Deliverables of more than one hundred (100) pages). The duration of the State Review Periods will be doubled if the State has not had an opportunity to review an interim draft of the Written Deliverable prior to its submission to the State. The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Written Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected prior to approval of the Written Deliverable (or at the State's election, subsequent to approval of the Written Deliverable). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within five (5) Business Days resubmit the Deliverable in a form that shows all revisions made



to the original version delivered to the State. Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Written Deliverable from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Written Deliverable to confirm that the identified deficiencies have been corrected.

### **2.255 PROCESS FOR APPROVAL OF CUSTOM SOFTWARE DELIVERABLES**

The State will conduct UAT of each Custom Software Deliverable in accordance with the following procedures to determine whether it meets the criteria for State approval – i.e., whether it conforms to and performs in accordance with its specifications without material deficiencies.

Within thirty (30) days (or such other number of days as the parties may agree to in writing) prior to Contractor's delivery of any Custom Software Deliverable to the State for approval, Contractor shall provide to the State a set of proposed test plans, including test cases, scripts, data and expected outcomes, for the State's use (which the State may supplement in its own discretion) in conducting UAT of the Custom Software Deliverable. Contractor, upon request by the State, shall provide the State with reasonable assistance and support during the UAT process.

For the Custom Software Deliverables listed in an attachment, the State Review Period for conducting UAT will be as indicated in the attachment. For any other Custom Software Deliverables not listed in an attachment, the State Review Period shall be the number of days agreed in writing by the parties (failing which it shall be forty-five (45) days by default). The State Review Period for each Custom Software Deliverable will begin when Contractor has delivered the Custom Software Deliverable to the State accompanied by the certification required by this **Section** and the State's inspection of the Deliverable has confirmed that all components of it have been delivered.

The State's UAT will consist of executing test scripts from the proposed testing submitted by Contractor, but may also include any additional testing deemed appropriate by the State. If the State determines during the UAT that the Custom Software Deliverable contains any deficiencies, the State will notify Contractor of the deficiency by making an entry in an incident reporting system available to both Contractor and the State. Contractor will modify promptly the Custom Software Deliverable to correct the reported deficiencies, conduct appropriate System Testing (including, where applicable, Regression Testing) to confirm the proper correction of the deficiencies and re-deliver the corrected version to the State for re-testing in UAT. Contractor will coordinate the re-delivery of corrected versions of Custom Software Deliverables with the State so as not to disrupt the State's UAT process. The State will promptly re-test the corrected version of the Software Deliverable after receiving it from Contractor.

Within three (3) business days after the end of the State Review Period, the State will give Contractor a written notice indicating the State's approval or rejection of the Custom Software Deliverable according to the criteria and process set out in this **Section**.

### **2.256 FINAL ACCEPTANCE**

"Final Acceptance" shall be considered to occur when the Custom Software Deliverable to be delivered has been approved by the State and has been operating in production without any material deficiency for fourteen (14) consecutive days. If the State elects to defer putting a Custom Software Deliverable into live production for its own reasons, not based on concerns about outstanding material deficiencies in the Deliverable, the State shall nevertheless grant Final Acceptance of the Project.

### **2.260 Ownership**

#### **2.261 OWNERSHIP OF WORK PRODUCT BY STATE**

The State owns all Deliverables, as they are work made for hire by the Contractor for the State. The State owns all United States and international copyrights, trademarks, patents or other proprietary rights in the Deliverables.

#### **2.262 VESTING OF RIGHTS**



With the sole exception of any preexisting licensed works identified in the SOW, the Contractor assigns, and upon creation of each Deliverable automatically assigns, to the State, ownership of all United States and international copyrights, trademarks, patents, or other proprietary rights in each and every Deliverable, whether or not registered by the Contractor, insofar as any the Deliverable, by operation of law, may not be considered work made for hire by the Contractor for the State. From time to time upon the State's request, the Contractor must confirm the assignment by execution and delivery of the assignments, confirmations of assignment, or other written instruments as the State may request. The State may obtain and hold in its own name all copyright, trademark, and patent registrations and other evidence of rights that may be available for Deliverables.

### **2.263 RIGHTS IN DATA**

The State is the owner of all data made available by the State to the Contractor or its agents, Subcontractors or representatives under the Contract. The Contractor will not use the State's data for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of the Contractor. No employees of the Contractor, other than those on a strictly need-to-know basis, have access to the State's data. Contractor will not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, the Contractor must only use personally identifiable information as strictly necessary to provide the Services and must disclose the information only to its employees who have a strict need-to-know the information. The Contractor must comply at all times with all laws and regulations applicable to the personally identifiable information.

The State is the owner of all State-specific data under the Contract. The State may use the data provided by the Contractor for any purpose. The State will not possess or assert any lien or other right against the Contractor's data. Without limiting the generality of this Section, the State may use personally identifiable information only as strictly necessary to utilize the Services and must disclose the information only to its employees who have a strict need to know the information, except as provided by law. The State must comply at all times with all laws and regulations applicable to the personally identifiable information. Other material developed and provided to the State remains the State's sole and exclusive property.

### **2.264 OWNERSHIP OF MATERIALS**

The State and the Contractor will continue to own their respective proprietary technologies developed before entering into the Contract. Any hardware bought through the Contractor by the State, and paid for by the State, will be owned by the State. Any software licensed through the Contractor and sold to the State, will be licensed directly to the State.

### **2.270 State Standards**

### **2.271 EXISTING TECHNOLOGY STANDARDS**

The Contractor will adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at <http://www.michigan.gov/dit>.

### **2.272 ACCEPTABLE USE POLICY**

To the extent that Contractor has access to the State computer system, Contractor must comply with the State's Acceptable Use Policy, see <http://www.michigan.gov/ditservice>. All Contractor employees must be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State system. The State reserves the right to terminate Contractor's access to the State system if a violation occurs.

### **2.273 SYSTEMS CHANGES**

Contractor is not responsible for and not authorized to make changes to any State systems without written authorization from the Project Manager. Any changes Contractor makes to State systems with the State's approval must be done according to applicable State procedures, including security, access and configuration management procedures.



## **2.280 Extended Purchasing**

### **2.281 MIDEAL (MICHIGAN DELIVERY EXTENDED AGREEMENTS LOCALLY**

Public Act 431 of 1984 permits DTMB to provide purchasing services to any city, village, county, township, school district, intermediate school district, non-profit hospital, institution of higher education, community, or junior college. A current listing of approved program members is available at:

[www.michigan.gov/buymichiganfirst](http://www.michigan.gov/buymichiganfirst). Unless otherwise stated, the Contractor must ensure that the non-state agency is an authorized purchaser before extending the Contract pricing.

The Contractor will supply Contract Services and equipment to these local governmental agencies at the established State of Michigan contract prices and terms to the extent applicable and where available. The Contractor must send its invoices will be submitted to and pay the local unit of government on a direct and individual basis.

To the extent that authorized local units of government purchase quantities of Services and/or equipment under this Contract, the quantities of Services and/or equipment purchased will be included in determining the appropriate rate wherever tiered pricing based on quantity is provided.

## **2.290 Environmental Provision**

**2.291 Energy Efficiency Purchasing Policy:** The State seeks wherever possible to purchase energy efficient products. This includes giving preference to U.S. Environmental Protection Agency (EPA) certified 'Energy Star' products for any category of products for which EPA has established Energy Star certification. For other purchases, the State may include energy efficiency as one of the priority factors to consider when choosing among comparable products.

**2.292 Environmental Purchasing Policy:** The State of Michigan is committed to encouraging the use of products and services that impact the environment less than competing products. The State is accomplishing this by including environmental considerations in purchasing decisions, while remaining fiscally responsible, to promote practices that improve worker health, conserve natural resources, and prevent pollution. Environmental components that are to be considered include: recycled content and recyclables; energy efficiency; and the presence of undesirable materials in the products, especially those toxic chemicals which are persistent and bioaccumulative. The Contractor should be able to supply products containing recycled and environmentally preferable materials that meet performance requirements and is encouraged to offer such products throughout the duration of this Contract. Information on any relevant third party certification (such as Green Seal, Energy Star, etc.) should also be provided.

**2.293 Hazardous Materials:** For the purposes of this Section, "Hazardous Materials" is a generic term used to describe asbestos, ACBMs, PCBs, petroleum products, construction materials including paint thinners, solvents, gasoline, oil, and any other material the manufacture, use, treatment, storage, transportation or disposal of which is regulated by the federal, state or local laws governing the protection of the public health, natural resources or the environment. This includes, but is not limited to, materials the as batteries and circuit packs, and other materials that are regulated as (1) "Hazardous Materials" under the Hazardous Materials Transportation Act, (2) "chemical hazards" under the Occupational Safety and Health Administration standards, (3) "chemical substances or mixtures" under the Toxic Substances Control Act, (4) "pesticides" under the Federal Insecticide Fungicide and Rodenticide Act, and (5) "hazardous wastes" as defined or listed under the Resource Conservation and Recovery Act.

(a) The Contractor must use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material according to all federal, State and local laws. The State must provide a safe and suitable environment for performance of Contractor's Work. Before the commencement of Work, the State must advise the Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of the Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor must immediately stop all affected Work, notify the State in writing about the conditions encountered, and take appropriate health and safety precautions.



- (b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State must order a suspension of Work in writing. The State must proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State must terminate the affected Work for the State's convenience.
- (c) Once the Hazardous Material has been removed or rendered harmless by the State, the Contractor must resume Work as directed in writing by the State. Any determination by the Michigan Department of Community Health or the Michigan Department of Environmental Quality that the Hazardous Material has either been removed or rendered harmless is binding upon the State and Contractor for the purposes of resuming the Work. If any incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in a time as mutually agreed by the parties.
- (d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to Applicable Laws to the condition approved by applicable regulatory agency(ies).

**Labeling:** Michigan has a Consumer Products Rule pertaining to labeling of certain products containing volatile organic compounds. For specific details visit [http://www.michigan.gov/deq/0,1607,7-135-3310\\_4108-173523--,00.html](http://www.michigan.gov/deq/0,1607,7-135-3310_4108-173523--,00.html)

**Refrigeration and Air Conditioning:** The Contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.

**Environmental Performance:** Waste Reduction Program – Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor's programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, et seq.).

### **2.300 Deliverables**

#### **2.301 SOFTWARE**

A list of the items of software the State is required to purchase for execution the Contract is attached. The list includes all software required to complete the Contract and make the Deliverables operable; if any additional software is required in order for the Deliverables to meet the requirements of this Contract, such software shall be provided to the State by Contractor at no additional charge (except where agreed upon and specified in a Statement of Work or Contract Change Notice). The attachment also identifies certain items of software to be provided by the State.

#### **2.302 HARDWARE**

A list of the items of hardware the State is required to purchase for execution the Contract is attached. The list includes all hardware required to complete the Contract and make the Deliverables operable; if any additional hardware is required in order for the Deliverables to meet the requirements of this Contract, such hardware shall be provided to the State by Contractor at no additional charge (except where agreed upon and specified in a Contract Change Notice). The attachment also identifies certain items of hardware to be provided by the State.

#### **2.303 EQUIPMENT TO BE NEW**

If applicable, all equipment provided under this Contract by Contractor shall be new where Contractor has knowledge regarding whether the equipment is new or assembled from new or serviceable used parts that are like new in performance or has the option of selecting one or the other. Equipment that is assembled from new



or serviceable used parts that are like new in performance is acceptable where Contractor does not have knowledge or the ability to select one or other, unless specifically agreed otherwise in writing by the State.

### **2.304 EQUIPMENT TO BE NEW AND PROHIBITED PRODUCTS**

The State will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against the Contract, shall be considered default by the Contractor of the terms and conditions of the Contract and may result in cancellation of the Contract by the State. The brand and product number offered for all items shall remain consistent for the term of the Contract, unless Procurement has approved a change order pursuant to **Section 2.024**.

### **2.310 Software Warranties**

#### **2.311 PERFORMANCE WARRANTY**

The Contractor represents and warrants that Deliverables, after Final Acceptance, will perform and operate in compliance with the requirements and other standards of performance contained in this Contract (including all descriptions, specifications and drawings made a part of the Contract) for a period of (90) ninety days. In the event of a breach of this warranty, Contractor will promptly correct the affected Deliverable(s) at no charge to the State.

#### **2.312 NO SURREPTITIOUS CODE WARRANTY**

The Contractor represents and warrants that no copy of licensed Software provided to the State contains or will contain any Self-Help Code or any Unauthorized Code as defined below. This warranty is referred to in this Contract as the "No Surreptitious Code Warranty."

As used in this Contract, "Self-Help Code" means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than the licensee of the software. Self-Help Code does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.

As used in this Contract, "Unauthorized Code" means any virus, Trojan horse, spyware, worm or other Software routines or components designed to permit unauthorized access to disable, erase, or otherwise harm software, equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code. Unauthorized Code does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.

In addition, Contractor will use up-to-date commercial virus detection software to detect and remove any viruses from any software prior to delivering it to the State.

#### **2.313 CALENDAR WARRANTY**

The Contractor represents and warrants that all software for which the Contractor either sells or licenses to the State of Michigan and used by the State prior to, during or after the calendar year 2000, includes or shall include, at no added cost to the State, design and performance so the State shall not experience software abnormality and/or the generation of incorrect results from the software, due to date oriented processing, in the operation of the business of the State of Michigan.

The software design, to insure calendar year rollover compatibility, shall include, but is not limited to: data structures (databases, data files, etc.) that provide 4-digit date century; stored data that contain date century recognition, including, but not limited to, data stored in databases and hardware device internal system dates; calculations and program logic (e.g., sort algorithms, calendar generation, event recognition, and all processing actions that use or produce date values) that accommodates same century and multi-century formulas and date values; interfaces that supply data to and receive data from other systems or organizations that prevent non-compliant dates and data from entering any State system; user interfaces (i.e., screens,



reports, etc.) that accurately show 4 digit years; and assurance that the year 2000 shall be correctly treated as a leap year within all calculation and calendar logic.

#### **2.314 THIRD-PARTY SOFTWARE WARRANTY**

The Contractor represents and warrants that it will disclose the use or incorporation of any third-party software into the Deliverables. At the time of Delivery, the Contractor shall provide in writing the name and use of any Third-party Software, including information regarding the Contractor's authorization to include and utilize such software. The notice shall include a copy of any ownership agreement or license that authorizes the Contractor to use the Third-party Software.

#### **2.315 PHYSICAL MEDIA WARRANTY**

Contractor represents and warrants that each licensed copy of the Software provided by the Contractor is free from physical defects in the media that tangibly embodies the copy. This warranty does not apply to defects discovered more than (30) thirty days after that date of Final Acceptance of the Software by the State. This warranty does not apply to defects arising from acts of Excusable Failure. If the Contractor breaches this warranty, then the State shall be entitled to replacement of the non-compliant copy by Contractor, at Contractor's expense (including shipping and handling).

### **2.320 Software Licensing**

#### **2.321 CROSS-LICENSE, DELIVERABLES ONLY, LICENSE TO CONTRACTOR**

The State grants to the Contractor, the royalty-free, world-wide, non-exclusive right and license under any Deliverable now or in the future owned by the State, or with respect to which the State has a right to grant such rights or licenses, to the extent required by the Contractor to market the Deliverables and exercise its full rights in the Deliverables, including, without limitation, the right to make, use and sell products and services based on or incorporating such Deliverables.

#### **2.322 CROSS-LICENSE, DELIVERABLES AND DERIVATIVE WORK, LICENSE TO CONTRACTOR**

The State grants to the Contractor, the royalty-free, world-wide, non-exclusive right and license under any Deliverable and/or Derivative Work now or in the future owned by the State, or with respect to which the State has a right to grant such rights or licenses, to the extent required by the Contractor to market the Deliverables and/or Derivative Work and exercise its full rights in the Deliverables and/or Derivative Work, including, without limitation, the right to make, use and sell products and services based on or incorporating such Deliverables and/or Derivative Work.

#### **2.323 LICENSE BACK TO THE STATE**

Unless otherwise specifically agreed to by the State, before initiating the preparation of any Deliverable that is a Derivative of a preexisting work, the Contractor shall cause the State to have and obtain the irrevocable, nonexclusive, worldwide, royalty-free right and license to (1) use, execute, reproduce, display, perform, distribute internally or externally, and prepare Derivative Works based upon all preexisting works and Derivative Works thereof.

#### **2.324 LICENSE RETAINED BY CONTRACTOR**

Contractor grants to the State a non-exclusive, royalty-free, site-wide, irrevocable, transferable license to use the Software and related documentation according to the terms and conditions of this Contract. For the purposes of this license, "site-wide" includes any State of Michigan office regardless of its physical location.

The State may modify the Software and may combine such with other programs or materials to form a derivative work. The State will own and hold all copyright, trademarks, patent and other intellectual property rights in any derivative work, excluding any rights or interest in Software other than those granted in this Contract.

The State may copy each item of Software to multiple hard drives or networks unless otherwise agreed by the parties.

The State will make and maintain no more than one archival copy of each item of Software, and each copy will contain all legends and notices and will be subject to the same conditions and restrictions as the original. The



State may also make copies of the Software in the course of routine backups of hard drive(s) for the purpose of recovery of hard drive contents.

In the event that the Contractor shall, for any reason, cease to conduct business, or cease to support the Software, the State shall have the right to convert these licenses into perpetual licenses, with rights of quiet enjoyment, but subject to payment obligations not to exceed the then current rates.

### **2.325 PRE-EXISTING MATERIALS FOR CUSTOM SOFTWARE DELIVERABLES**

Neither Contractor nor any of its Subcontractors shall incorporate any preexisting materials (including Standard Software) into Custom Software Deliverables or use any pre-existing materials to produce Custom Software Deliverables if such pre-existing materials will be needed by the State in order to use the Custom Software Deliverables unless (i) such pre-existing materials and their owners are identified to the State in writing and (ii) such pre-existing materials are either readily commercially available products for which Contractor or its Subcontractor, as the case may be, has obtained a license (in form and substance approved by the State) in the name of the State, or are materials that Contractor or its Subcontractor, as the case may be, has the right to license to the State and has licensed to the State on terms and conditions approved by the State prior to using such pre-existing materials to perform the Services.

### **2.330 Source Code Escrow**

#### **2.331 DEFINITION**

"Source Code Escrow Package" shall mean:

- (a) A complete copy in machine-readable form of the source code and executable code of the Licensed Software, including any updates or new releases of the product;
- (b) A complete copy of any existing design documentation and user documentation, including any updates or revisions; and/or

Complete instructions for compiling and linking every part of the source code into executable code for purposes of enabling verification of the completeness of the source code as provided below. Such instructions shall include precise identification of all compilers, library packages, and linkers used to generate executable code.

#### **2.332 DELIVERY OF SOURCE CODE INTO ESCROW**

Contractor shall deliver a Source Code Escrow Package to the Escrow Agent, pursuant to the Escrow Contract, which shall be entered into on commercially reasonable terms subject to the provisions of this Contract within (30) thirty days of the execution of this Contract.

**2.333 DELIVERY OF NEW SOURCE CODE INTO ESCROW**

If at anytime during the term of this Contract, the Contractor provides a maintenance release or upgrade version of the Licensed Software, Contractor shall within six (6) months deposit with the Escrow Agent, in accordance with the Escrow Contract, a Source Code Escrow Package for the maintenance release or upgrade version, and provide the State with notice of the delivery.

**2.334 VERIFICATION**

The State reserves the right at any time, but not more than once a year, either itself or through a third party contractor, upon thirty (30) days written notice, to seek verification of the Source Code Escrow Package.

**2.335 ESCROW FEES**

The Contractor will pay all fees and expenses charged by the Escrow Agent.

**2.336 RELEASE EVENTS**

The Source Code Escrow Package may be released from escrow to the State, temporarily or permanently, upon the occurrence of one or more of the following:

- (a) The Contractor becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under bankruptcy or insolvency law, whether domestic or foreign;
- (b) The Contractor has wound up or liquidated its business voluntarily or otherwise and the State has reason to believe that such events will cause the Contractor to fail to meet its warranties and maintenance obligations in the foreseeable future;

The Contractor voluntarily or otherwise discontinues support of the provided products or fails to support the products in accordance with its maintenance obligations and warranties.

**2.337 RELEASE EVENT PROCEDURES**

If the State desires to obtain the Source Code Escrow Package from the Escrow Agent upon the occurrence of an Event in this **Section**, then:

- (a) The State shall comply with all procedures in the Escrow Contract;
- (b) The State shall maintain all materials and information comprising the Source Code Escrow Package in confidence in accordance with this Contract;

If the release is a temporary one, then the State shall promptly return all released materials to Contractor when the circumstances leading to the release are no longer in effect.

**2.338 LICENSE**

Upon release from the Escrow Agent pursuant to an event described in this **Section**, the Contractor automatically grants the State a non-exclusive, irrevocable license to use, reproduce, modify, maintain, support, update, have made, and create Derivative Works. Further, the State shall have the right to use the Source Code Escrow Package in order to maintain and support the Licensed Software so that it can be used by the State as set forth in this Contract.

**2.339 DERIVATIVE WORKS**

Any Derivative Works to the source code released from escrow that are made by or on behalf of the State shall be the sole property of the State. The State acknowledges that its ownership rights are limited solely to the Derivative Works and do not include any ownership rights in the underlying source code.



### **Glossary**

Days	Means calendar days unless otherwise specified.
24x7x365	Means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).
Additional Service	Means any Services/Deliverables within the scope of the Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration.
Audit Period	See Section 2.110
Business Day	Whether capitalized or not, shall mean any day other than a Saturday, Sunday or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am EST through 5:00pm EST unless otherwise stated.
Blanket Purchase Order	An alternate term for Contract as used in the States computer system.
Business Critical	Any function identified in any Statement of Work as Business Critical.
Chronic Failure	Defined in any applicable Service Level Agreements.
Deliverable	Physical goods and/or commodities as required or identified by a Statement of Work. All software remains owned by Contractor, whether it is the portals or any custom software
DTMB	Michigan Department of Technology, Management and Budget
Environmentally preferable products	A product or service that has a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. Such products or services may include, but are not limited to, those that contain recycled content, minimize waste, conserve energy or water, and reduce the amount of toxics either disposed of or consumed.
Excusable Failure	See Section 2.244.
Hazardous material	Any material defined as hazardous under the latest version of federal Emergency Planning and Community Right-to-Know Act of 1986 (including revisions adopted during the term of the Contract).
Incident	Any interruption in Services.
ITB	A generic term used to describe an Invitation to Bid. The ITB serves as the document for transmitting the RFP to potential bidders
Key Personnel	Any Personnel designated in Article 1 as Key Personnel.
New Work	Any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration.
Ozone-depleting substance	Any substance the Environmental Protection Agency designates in 40 CFR part 82 as: (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or (2) Class II, including, but not limited to, hydro chlorofluorocarbons
Post-Consumer Waste	Any product generated by a business or consumer which has served its intended end use, and which has been separated or diverted from solid waste for the purpose of recycling into a usable commodity or product, and which does not include post-industrial waste.
Post-Industrial Waste	Industrial by-products that would otherwise go to disposal and wastes generated after completion of a manufacturing process, but do not include internally generated scrap commonly returned to industrial or manufacturing processes.
Recycling	The series of activities by which materials that are no longer useful to the generator are collected, sorted, processed, and converted into raw materials and used in the production of new products. This definition excludes the use of these materials as a fuel substitute or for energy production.
Deleted – Not Applicable	Section is not applicable or included in this RFP. This is used as a placeholder to maintain consistent numbering.



Reuse	Using a product or component of municipal solid waste in its original form more than once.
RFP	Request for Proposal designed to solicit proposals for services
Services	Any function performed for the benefit of the State.
Source reduction	Any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, energy recovery, treatment, or disposal.
State Location	Any physical location where the State performs work. State Location may include state-owned, leased, or rented space.
Subcontractor	A company Contractor delegates performance of a portion of the Services to, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.
Unauthorized Removal	Contractor's removal of Key Personnel without the prior written consent of the State.
Waste prevention	Source reduction and reuse, but not recycling.
Waste reduction and Pollution prevention	The practice of minimizing the generation of waste at the source and, when wastes cannot be prevented, utilizing environmentally sound on-site or off-site reuse and recycling. The term includes equipment or technology modifications, process or procedure modifications, product reformulation or redesign, and raw material substitutions. Waste treatment, control, management, and disposal are not considered pollution prevention, per the definitions under Part 143, Waste Minimization, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended.
Work in Progress	A Deliverable that has been partially prepared, but has not been presented to the State for Approval.
Work Product	Refers to any data compilations, reports, and other media, materials, or other objects or works of authorship created or produced by the Contractor as a result of an in furtherance of performing the services required by this Contract.

**Attachment A - Cost Table**

All information related, directly or indirectly, to the Contractor's proposed charges for services and deliverables including, but not limited to, costs, fees, prices, rates, bonuses, discounts, rebates, or the identification of free services, labor or materials.



Table 1: Summary of the Project Cost

*These costs apply to the 5-year contract base period only, not the option years.*

One Time Project Costs			
Item	Project Cost(s)	Cost (\$)	Comments
A.	<b>Project Plan delivery</b> <ul style="list-style-type: none"> <li>Project Plan (and its associated sub-plans as listed below, each in its own document)</li> <li>Software license use – 25% of total license cost \$99,000 x 25%</li> </ul>	\$24,750.00	The State is making an initial payment for software license use of 25% of the total license cost within this milestone. The total cost of the license is \$99,000 for which the State will pay \$24,750 within this milestone.
B.	<b>Software Access Delivery</b>	N/C	

One Time Project/On-Going Costs			
Item	Project Cost(s)	Cost (\$)	Comments
C.	<b>Testing</b> <ul style="list-style-type: none"> <li>Test Plan</li> <li>Test Cases/Scripts</li> <li>Test Environment</li> <li>Implementation of defect tracking tool</li> <li>Creation of Test Environment including data</li> <li>Test Environment Verification</li> <li>Completion of tests as defined above</li> <li>Correction or resolution of defects (unless so excluded in writing by DTMB Project Manager)</li> <li>Test Result Report (developed after completion of each of the following: Performance Test, System Test)</li> <li>User Acceptance Test</li> <li>Defect correction or resolution and Test Result Report</li> <li>Updated documentation</li> <li>Review and, as required, update the various components of the Project Plan</li> <li>Updated Requirement Traceability Matrix</li> </ul>	N/C	
D.	<b>Implementation</b> <ul style="list-style-type: none"> <li>Fully implemented and operational Housing Choice Voucher Program applicant and landlord modules that have been delivered and approved by SOM project manager</li> </ul>	N/C	
E.	<b>Training</b> <ul style="list-style-type: none"> <li>Train the trainer training</li> <li>End user training</li> </ul>	\$86,250.00	The State is making the final payment for software license use which represents 75% of the total license cost within this



	<ul style="list-style-type: none"> <li>• Technical training for State individuals who will be working with the services contractor to configure the applications including establishing databases and interfaces, data conversion, customization, and upgrading the customized software.</li> <li>• System administration training for State personnel who will be responsible for ongoing maintenance and administration of the system, including security</li> <li>• Inclusive of all deliverables cited within Sections B, D and E</li> </ul>		milestone. The total cost of the license is \$99,000 for which the State will pay \$74,250.00 within this milestone, plus \$12,000.00 for implementation and other related deliverables.
F.	<b>Warranty</b>	N/C	
G.	<b>Documentation</b>	N/C	
H.	<b>Maintenance (Total cost)</b> <b>5 years of annual maintenance</b> See Table 2 for annual breakdown	\$120,922.23	
I.	<b>Hosting (Total cost)</b> <b>5 Years of hosting</b> See Table 3 for annual breakdown	\$268,013.48	
J.	<b>Hardware</b>	N/C	
K.	<b>Reserve Bank of Hours</b> Give breakdown in Table 4.	\$85,590.00	
L.	<b>Other</b> Give breakdown in Table 11, item L	n/a	
M.	<b>Sub-total of the On-going/Future Project Costs, items I - N</b>	\$561,025.71	
	<b>Total Project Cost (items A – M)</b>	<b>\$585,525.71</b>	



Table 2: Five Years Recurring Costs: licenses, Maintenance and Support

No.	Cost Categories	Cost (\$)	Comments
A.	<b>COTS/Application software update cost (Includes licensing and updates each year)</b>		
	1. First Year (after warranty)	n/a	
	2. Second Year	n/a	
	3. Third Year	n/a	
	4. Fourth Year	n/a	
	5. Fifth Year	n/a	
B.			
C.	<b>Maintenance and support cost</b>		
	1. First Year (after warranty)	\$22,000.00	
	2. Second Year	\$22,458.34	
	3. Third Year	\$24,255.00	
	4. Fourth Year	\$25,467.75	
	5. Fifth Year	\$26,741.14	
	<b>Total Recurring Cost</b>	<b>\$120,922.23</b>	

Table 3: Five Years Recurring Costs: Hosting

No.	Cost Categories	Annual Cost (\$)	Comments
A.	<b>hosting</b>		Hosting of Applicant and Partner Portal
	First Year	\$50,400.00	
	Second Year	\$50,813.44	
	Third Year	\$52,910.40	
	Fourth Year	\$55,555.92	
	Fifth Year	\$58,333.72	
B.		<b>\$268,013.48</b>	



Table 4: Reserve bank of hours for future enhancements

No.	Resource Type	Hourly Rate
I	Project management	\$145.00
	Business analysts	\$185.00
	System analysts	\$185.00
	Programmer/developers	\$175.00
	application consultants	\$190.00
	Database administrators	\$200.00
	Q/A Manager	\$175.00
	Security specialist	\$190.00
	Testers	\$150.00
	Technical writers	\$100.00
	application report writers	\$150.00
	System Architects	\$200.00
	Network engineer/administrator	\$200.00
	Software Architects	\$225.00
	Project assistants	\$125.00
	Web developers	\$170.00
	Application trainers	\$145.00
	Others: (List) below:	\$
	Average hourly rate (add the hourly rates, then divide by the number of resource types)	\$171.18
	<b>Total Cost of Optional "Reserve Bank of Hours " (500 hours X average hourly rate)</b>	<b>\$85,590 .00</b>

**Notes:**

- Hourly rates quoted are firm, fixed rates for the duration of the contract 5-YEAR BASE PERIOD.  
**Travel and other expenses must be approved by the DTMB Project Manager before they are incurred** and if approved will be paid by the State using the State rates. "Estimated Hours" and "Extended Price" are non-binding and will be used at the State's discretion to determine best value to the State. The State will utilize the loaded hourly rates detailed above for each staff that will be used as fixed rates for responses to separate statements of work.
- The State intends to establish funding for up to five-hundred (500) hours over the five year life of the application for development. Actual funding for enhancements will occur on a yearly basis, and there is no guarantee as to the level of funding, if any, available to the project.
- Unless otherwise agreed by the parties, each Statement of Work will include:
  - Background
  - Project Objective
  - Scope of Work
  - Deliverables
  - Acceptance Criteria
  - Project Control and Reports
  - Specific Department Standards
  - Payment Schedule
  - Travel and Expenses
  - Project Contacts
  - Agency Responsibilities and Assumptions
  - Location of Where the Work is to be Performed
  - Expected Contractor Work Hours and Conditions
- The parties agree that the Services/Deliverables to be rendered by Contractor using the future enhancements/rate card on this Contract will be defined and described in detail in separate Statements of Work. Contractor shall not be obliged or authorized to commence any work to implement a Statement of Work until authorized via a purchase order issued against this Contract.



Table 5: Software License Fee

No.	Cost Categories	Cost (\$)	Comments
A.	25% invoiced on contract execution	\$24,750.00	Software license fee for the App Partner Portal
	75% invoiced on acceptance of warranty	\$74,250.00	
B.		\$99,000.00	



**Attachment B – RESERVED**



**Attachment C – Hosting Environment**

**Reserved**



**Attachment D – RESERVED**

**Attachment E – Security and Disaster Recovery Process**

**Disaster plan required under this contract supersedes any applicable contract terms in this contract including this attachment E.**

Upon Contract award, Contractor will work with DTMB/MSHDA to mutually develop an acceptable disaster recovery plan. This will allow all parties to define the requirements for the disaster recovery for the network and critical servers, and to review and update, as necessary, the existing disaster recovery plan, and determine mutually the responsibilities for identifying, declaring, and executing recovery from an actual disaster. A security threat matrix will also be provided and all controls will be identified.

**Contractor Responsibilities:**

- a. CONTRACTOR will provide DTMB/MSHDA with processes that allow DTMB/MSHDA to identify data that must be stored at off-site vault and to review storage and retention periods for managing DTMB/MSHDA off-site data. CONTRACTOR will manage daily shipments to and from the vault, and issue emergency recalls of tapes from the vault when required to complete restorations.
- b. As necessary, CONTRACTOR will maintain and update the documented system data recovery plan on an ongoing basis when configuration changes are made. When updates to the plan occur, CONTRACTOR will perform a desk-check test of the documented system recovery plan to verify that all necessary recovery information exists and verifies that the strategy of the recovery plan supports daily operations.
- c. As necessary, CONTRACTOR will maintain and update the documented system data recovery plan to ensure recoverability of the operating environment. When updates to the plan occur, CONTRACTOR will perform a review of the documented system recovery plan to verify that all necessary recovery information exists and to verify the strategy of the recovery plan supports daily operational requirements.
- d. CONTRACTOR will test the plan using the disaster site vendor at least once every year to make sure the plan is still operational. If there are changes that need to be made then CONTRACTOR will work with the DTMB/MSHDA to make the necessary changes to ensure that DTMB/MSHDA can recover from a disaster.

**DTMB/MSHDA Responsibilities:**

- a. DTMB/MSHDA will provide to Contractor documented business requirements, definitions, and business parameters for the disaster recovery plan.
- b. DTMB/MSHDA will work with Contractor to jointly develop a disaster-recovery plan for the network and critical servers.
- c. DTMB/MSHDA will review and approve the strategy of the recovery plan to ensure that it supports DTMB/MSHDA operational and business process requirements.
- d. DTMB/MSHDA will review prioritized lists of applications and/or sites and will provide updates, if necessary, to recovery requirements.
- e. DTMB/MSHDA will review and approve any changes to the disaster recovery plan that will result in changes to the overall recovery scheme.
- f. DTMB/MSHDA will be responsible for all costs related to the execution of the disaster recovery plan in the event that DTMB/MSHDA declares a disaster.

**Disaster Recovery Services****Recovery Site**

CONTRACTOR will perform the following tasks:

- a. Alert DTMB/MSHDA immediately when a situation arises that poses a very high degree of risk that a physical site disaster could occur.
- b. Make sure hardware components are available to perform recovery testing as required to meet defined service levels associated with the disaster recovery testing services and recovery of critical business systems if a site disaster occurs.



- c. Test the recovery plan at least once a year to make sure it still works. CONTRACTOR will work with the DTMB/MSHDA to make all necessary changes to the plan to enable DTMB/MSHDA to recover in the shortest amount of time.
- d. CONTRACTOR will not include any additional support resources (personnel) for use at the shell site. To provide DTMB/MSHDA with support resources in the event of a declaration of a disaster, CONTRACTOR will suspend DTMB/MSHDA support activities at the production site and deploy dedicated personnel to the recovery site to perform support activities remotely or locally, as required.

DTMB/MSHDA will perform the following tasks:

- a. Maintain responsibility for initiation of a declaration of disaster to CONTRACTOR. An authorized DTMB/MSHDA employee must notify CONTRACTOR and confirm with the primary CONTRACTOR contact that disaster recovery procedures should begin.
- b. Maintain responsibility for connectivity to the selected warm site facility, if this is the approved plan.
- c. DTMB/MSHDA will be responsible for business process impact and all associated risks inherent in the decision not to contract a recovery facility.

#### **Off-Site CD and Tape Storage**

CONTRACTOR will perform the following task:

- a. When required, issue emergency recalls of CD/tapes from the vault to complete restorations.

#### **Disaster Recovery Action Plan**

CONTRACTOR will perform the following tasks:

- a. Maintain and update a documented system data recovery plan as necessary when configuration changes are made.
- b. Perform a desk check test of the system recovery plan to verify the recovery information exists and the recovery plan supports daily operations.

DTMB/MSHDA will perform the following tasks:

- a. Work with CONTRACTOR to determine mutually the requirements and develop the disaster recovery plan for the network and critical servers.
- b. Work with CONTRACTOR to determine mutually the responsibilities for identifying, declaring, and executing recovery from an actual disaster.
- c. Provide to CONTRACTOR documented business requirements, definitions, and business parameters for the disaster recovery plan.
- d. Review and approve the recovery plan strategy to ensure that it supports DTMB/MSHDA's operational and business process requirements.
- e. Review prioritized lists of applications and/or sites and will provide updates, if necessary, to recovery requirements.
- f. Review and approve any changes to the disaster recovery plan that will result in changes to the overall recovery scheme.
- g. Keep in force and effect and be financially responsible for any disaster recovery agreements with third-party providers.
- h. Maintain responsibility for all costs related to the execution of the disaster recovery plan and the ongoing support requirements if DTMB/MSHDA declares a disaster.

#### **Recovery Testing**



CONTRACTOR will perform the following task:

- a. Provide the required personnel resources to perform disaster recovery testing no less frequency than once per year.



**Attachment F – RESERVED**



## Attachment G – Preliminary Project Plan

ID	Task Name	Cost	Duration	Start	Finish	Predecessors	Resource Names
1	<b>MSHDA PORTALS</b>	<b>\$585,525.71</b>	<b>913 days?</b>	<b>Thu 11/1/12</b>	<b>Mon 5/2/16</b>		
2	<b>KICKOFF</b>	<b>\$24,750.00</b>	<b>7 days?</b>	<b>Thu 11/1/12</b>	<b>Fri 11/9/12</b>		
3	Contract Signed	\$0.00	1 day?	Thu 11/1/12	Thu 11/1/12		
4	Project Plan Delivered	\$24,750.00	1 day?	Thu 11/1/12	Thu 11/1/12		
5	Kickoff Meeting (Initiation & Discovery)	\$0.00	1 day?	Fri 11/9/12	Fri 11/9/12		
6	Deployment Plan to Landlord started by MSHDA	\$0.00	1 day?	Fri 11/9/12	Fri 11/9/12		
7	<b>BRANDING</b>	<b>\$0.00</b>	<b>18 days</b>	<b>Fri 11/9/12</b>	<b>Tue 12/4/12</b>		
8	Emphasys begins Branding Work	\$0.00	5 days	Fri 11/9/12	Thu 11/15/12		
9	Emphasys provides link to MSHDA to review Branding	\$0.00	6 days	Fri 11/16/12	Fri 11/23/12	8	
10	Change Order form provided to client	\$0.00	3 days	Fri 11/16/12	Tue 11/20/12	8	
11	Branding Acceptance form sent to client	\$0.00	10 days	Fri 11/16/12	Thu 11/29/12	8	
12	Branding acceptance form returned to Emphasys	\$0.00	3 days	Fri 11/30/12	Tue 12/4/12	11	
13	<b>SSIS PACKAGE DESIGN &amp; DEVELOPMENT</b>	<b>\$0.00</b>	<b>15 days</b>	<b>Fri 11/30/12</b>	<b>Thu 12/20/12</b>		
14	Development of SSIS Package	\$0.00	5 days	Fri 11/30/12	Thu 12/6/12		
15	Testing of the SSIS import functionality	\$0.00	10 days	Fri 12/7/12	Thu 12/20/12	14	
16	Changes to the SSIS made as needed	\$0.00	10 days	Fri 12/7/12	Thu 12/20/12	14	
17	<b>TRAINING AND DEPLOYMENT</b>	<b>\$86,250.00</b>	<b>12 days?</b>	<b>Fri 12/7/12</b>	<b>Mon 12/24/12</b>		
18	System Configuration and Setups	\$0.00	1 day?	Fri 12/7/12	Fri 12/7/12	14	
19	User Training & Admin Training	\$74,250.00	1 day?	Fri 12/7/12	Fri 12/7/12	14	
20	MSHDA to hold training session for landlords	\$0.00	5 days	Mon 12/17/12	Fri 12/21/12		
21	Go live acceptance form submitted to Emphasys	\$12,000.00	3 days	Thu 12/20/12	Mon 12/24/12		
22	<b>INSTALLATION</b>	<b>\$0.00</b>	<b>7 days?</b>	<b>Fri 11/30/12</b>	<b>Mon 12/10/12</b>		
23	Installation of Branded Portals on Test Server	\$0.00	1 day?	Fri 11/30/12	Fri 11/30/12		
24	Installation of the SSIS Package done	\$0.00	1 day?	Fri 12/7/12	Fri 12/7/12		
25	Installation on Live Server	\$0.00	1 day?	Mon 12/10/12	Mon 12/10/12	24	
26	Go Live	\$0.00	1 day?	Thu 12/20/12	Thu 12/20/12		
27	Go-Live and Post Production Support	\$0.00	1 day?	Thu 12/20/12	Thu 12/20/12		
28	Contingency Custom	\$85,500.00	1 day?	Mon 12/3/12	Mon 12/3/12		
29	<b>Software Maintenance &amp; Hosting</b>	<b>\$388,935.71</b>	<b>913 days?</b>	<b>Thu 11/1/12</b>	<b>Mon 5/2/16</b>		
30	Software Maintenance & Hosting Year 1	\$72,400.00	1 day?	Thu 11/1/12	Thu 11/1/12		
31	Software Maintenance & Hosting Year 2	\$73,271.78	1 day?	Wed 5/1/13	Wed 5/1/13		
32	Software Maintenance & Hosting Year 3	\$77,165.40	1 day?	Thu 5/1/14	Thu 5/1/14		
33	Software Maintenance & Hosting Year 4	\$81,023.67	1 day?	Fri 5/1/15	Fri 5/1/15		
34	Software Maintenance & Hosting Year 5	\$85,074.88	1 day?	Mon 5/2/16	Mon 5/2/16		

Project: MSHDA Portals  
Date: Thu 10/25/12

Task		External Milestone		Manual Summary Rollup	
Split		Inactive Task		Manual Summary	
Milestone		Inactive Milestone		Start-only	
Summary		Inactive Summary		Finish-only	
Project Summary		Manual Task		Progress	
External Tasks		Duration-only		Deadline	



## Attachment H – Technical/General System Requirements

**1. Computer Security and Access Requirements**

#	Detailed Requirement
A.	The system can be accessed 24x7x365

**6. Security/Password Controls**

#	Detailed Requirement
A.	MSHDA staff can reset usernames/passwords
B.	MSHDA staff can create usernames/passwords
C.	MSHDA staff can delete usernames/passwords
D.	Multi-level security access
E.	MSHDA staff can set up security rights through an Administrative Panel

**7. Security/Activity Logging**

#	Detailed Requirement
A.	Tracking of logins can be done by MSHDA staff
B.	Tracking of logoffs can be done by MSHDA staff
C.	Actions that create changes can be tracked by MSHDA staff

8.

**9. Reporting Requirements**

#	Detailed Requirement
A.	Monthly reports on down-time of the portals are provided
B.	Login reports for each portal can be downloaded
C.	Module access reports for each portal can be downloaded
D.	Data on Landlords can be exported
E.	Data on Applicants can be exported
F.	E-mail lists can be exported

**10. Audit Trail**

#	Detailed Requirement
A.	Actions that change a landlord record should be auditable
B.	Actions that change an applicant record should be auditable

**11. Edit and Validation Control**

#	Detailed Requirement
A.	These controls must be given to MSHDA staff that are assigned as the highest level of security under the administrative panel

**12. Capacity**

#	Detailed Requirement
A.	Consistent traffic must be accommodated, but expected that over 60,000 end users could access the Partner Portal
B.	Consistent traffic must be accommodated, but expected that over 100,000 end users could access the Applicant Portal



#### 14. Error Handling

#	Detailed Requirement
A.	Contractor and third party vendor must be accessible based on contract to resolve errors during use of either portal

#### 15. Backup and Recovery

#	Detailed Requirement
A.	Third party vendor should follow protocol outline for backup and recovery

#### 16. Performance Requirements

#	Detailed Requirement
A.	24/7/365 access for Partner Portal
B.	24/7/365 access for Applicant Portal



### **Attachment I - Functional Requirements**

The proposed system shall, without additional software licensing or any additional development time or cost:

#	Functional Requirements – APPLICANT PROGRAM
FR 1.	The program supports a number of applicants up to 250,000.
FR 2.	The program will contain multi-level security including Applicant, Admin, and Housing Authority roles.
FR 3.	<p>The program will include an admin panel. The admin panel will include the menu items:</p> <ul style="list-style-type: none"> <li>• Account Status</li> <li>• Applicants</li> <li>• Approve Applicants</li> <li>• Emails</li> <li>• Email Applicants</li> <li>• Login History Reports</li> <li>• Request Type <ul style="list-style-type: none"> <li>○ Ineligibility Reasons</li> <li>○ Reasonable Accommodations</li> <li>○ Translation Service</li> </ul> </li> <li>• Settings</li> <li>• Users</li> <li>• User Applicants</li> <li>• Welcome Message</li> </ul>
FR 4.	<p>From the admin panel, the Account Status menu item will include the following fields for all applicants:</p> <ul style="list-style-type: none"> <li>• Lock Out?</li> <li>• User Name</li> <li>• First Name</li> <li>• Last Name</li> <li>• Email</li> </ul> <p>Data can be sorted by:</p> <ul style="list-style-type: none"> <li>• First Name</li> <li>• Last Name</li> <li>• Username</li> <li>• Role</li> </ul>
FR 5.	<p>All data in table can be exported</p> <p>From the admin panel, the Applicants menu item will include the following fields for all applicants:</p> <ul style="list-style-type: none"> <li>• Last Name</li> <li>• First Name</li> <li>• Last 4 SSN</li> <li>• Email</li> </ul> <p>Data can be sorted by:</p> <ul style="list-style-type: none"> <li>• First Name</li> <li>• Last Name</li> </ul>
FR 6.	<p>From the admin panel, the Approve Applicants menu item will include the following fields:</p> <ul style="list-style-type: none"> <li>• Create Date</li> <li>• User Name</li> <li>• Applicant</li> <li>• Approved?</li> </ul> <p>Approval and Denial buttons</p> <p>All data in table can be exported</p>



#	Functional Requirements – APPLICANT PROGRAM
FR 7.	<p>From the admin panel, the Emails menu item will include the following fields:</p> <ul style="list-style-type: none"> <li>Email Name</li> <li>Description</li> </ul> <p>Admin can edit automated email messages for the following scenarios:</p> <ul style="list-style-type: none"> <li>Applicant Account Approved</li> <li>Applicant Account Denied</li> <li>Create Account Admin</li> <li>Create Account Applicant</li> <li>Forgot Password</li> <li>New Request</li> <li>Request Approved/Denied</li> </ul>
FR 8.	<p>From the admin panel, the Email Applicants menu item will include the following fields:</p> <ul style="list-style-type: none"> <li>List of all waiting lists with selection check box.</li> <li>From</li> <li>Subject</li> <li>File Attachment with browse function</li> <li>Body Text Box</li> </ul>
FR 9.	<p>From the admin panel, the Login History Reports menu item will include the following charts</p> <ul style="list-style-type: none"> <li>Number of applicant logins. (historical)</li> <li>Top 10 most logged in applicants. (historical)</li> </ul> <p>All data in table can be exported</p>
FR 10.	<p>From the admin panel, the Request Type menu item will include the following fields:</p> <ul style="list-style-type: none"> <li>Type</li> <li>Enabled</li> <li>Notify Email</li> <li>Require Applicant Notes</li> </ul> <p>Admin will have the ability to enable or disable applicant request types:</p> <ul style="list-style-type: none"> <li>Add Family Member</li> <li>Change Family Annual Income</li> <li>Change Personal Information</li> <li>Change SSN</li> <li>Remove Family Member</li> <li>Request Informal Review Hearing</li> <li>Request Reasonable Accommodation</li> <li>Request Translation Service</li> <li>Reschedule a Briefing</li> <li>Reschedule an Appointment</li> </ul> <p>Admin will be able to edit and limit the number of request allowed per request category.</p>
FR 11.	<p>From the admin panel, the Ineligibility Reasons menu item will include the following fields:</p> <ul style="list-style-type: none"> <li>Name</li> </ul>
FR 12.	<p>From the admin panel, the Reasonable Accommodation menu item will include the following fields:</p> <ul style="list-style-type: none"> <li>Name</li> </ul>
FR 13.	<p>From the admin panel, the Translation Service menu item will include the following fields:</p> <ul style="list-style-type: none"> <li>Name</li> </ul>



#	<b>Functional Requirements – APPLICANT PROGRAM</b>
FR 14.	<p>From the admin panel, the Settings menu item will include the following options:</p> <ul style="list-style-type: none"> <li>• Create account <ul style="list-style-type: none"> <li>○ Enable/Disable – Allow applicant to create own account</li> <li>○ Enable/Disable – Applicant requires approval</li> <li>○ Email address to notify when applicant creates account text box</li> <li>○ Enable/Disable - CAPTCHA on applicant create account page</li> <li>○ Create account success message text box</li> <li>○ Create account applicant error message text box</li> <li>○ Create account requires approval success message text box</li> <li>○ Enable/Disable – Allow more than one account per HOH</li> <li>○ Only one allowed account per HOH error message text box</li> </ul> </li> <li>• Terms of Service <ul style="list-style-type: none"> <li>○ Enable/Disable – Show terms of service</li> <li>○ Terms of service message text box</li> <li>○ Enable/Disable – Require agreement to terms of service</li> </ul> </li> <li>• F.A.Q. <ul style="list-style-type: none"> <li>○ Enable/Disable – Show F.A.Q. link</li> <li>○ F.A.Q. Link text, text box</li> <li>○ F.A.Q. link color option</li> <li>○ F.A.Q. URL text box</li> </ul> </li> </ul>
FR 14.	<p>From the admin panel, the Settings menu item will include the following options:</p> <ul style="list-style-type: none"> <li>• Requests <ul style="list-style-type: none"> <li>○ Enable/Disable – Send notify email on applicant request</li> <li>○ Enable/Disable – Notify applicant on request processed</li> <li>○ Enable/Disable – Allow applicant to create requests</li> <li>○ Create request success message text box</li> <li>○ Max allowed requests reached error message text box</li> <li>○ Do not allow reschedule appointment and briefing requests that are within ____ hours</li> </ul> </li> <li>• Waiting Lists <ul style="list-style-type: none"> <li>○ Enable/Disable – Show position column</li> <li>○ Enable/Disable – Show Status Column</li> <li>○ Status Option</li> <li>○ Show Elite Status</li> <li>○ Show User Defined Status</li> <li>○ Show waiting list preferences</li> </ul> </li> <li>• Offers <ul style="list-style-type: none"> <li>○ Enable/Disable – Show offers alert message</li> <li>○ Offer alert message text box</li> </ul> </li> <li>• Miscellaneous <ul style="list-style-type: none"> <li>○ Show export icons for drop down</li> <li>○ All</li> <li>○ None</li> <li>○ Admin Users</li> <li>○ Admin and all HA Users</li> <li>○ Enable/Disable – Split address fields</li> <li>○ Enable/Disable – Show welcome message</li> <li>○ Enable/Disable – Show forms</li> <li>○ Enable/Disable – Show contact us</li> <li>○ Enable/Disable – Show appointments menu</li> <li>○ Enable/Disable – Show briefings</li> </ul> </li> </ul>



#	Functional Requirements – APPLICANT PROGRAM
FR. 14	<ul style="list-style-type: none"> <li>○ Enable/Disable – Annual income on the “My Profile” page.</li> <li>○ Enable/Disable – Show annual Number of days of login history field</li> <li>○ Default phone mask text box</li> <li>○ Applicant portal URL text box</li> <li>○ Email from text box</li> <li>• Save button</li> <li>• Cancel button</li> </ul>
FR 15.	<p>The program will contain a Login Page. The Login Page will include:</p> <ul style="list-style-type: none"> <li>• Welcome Message text field</li> <li>• Username field</li> <li>• Password field</li> <li>• Create account link</li> <li>• Forgot password link</li> <li>• Terms of service</li> </ul>
FR 16.	<p>The program will contain a Create Account page that will include fields for:</p> <ul style="list-style-type: none"> <li>• User Name</li> <li>• Password</li> <li>• Confirm Password</li> <li>• Email</li> <li>• Last 4 Digits From SSN</li> <li>• Birth Date</li> <li>• Last Name</li> <li>• Encrypted Code</li> </ul>
FR 17.	<p>The program will allow applicants to change their password including the following fields:</p> <ul style="list-style-type: none"> <li>• Old Password</li> <li>• New Password</li> <li>• Confirm Password</li> </ul>
FR 18.	<p>The program will allow applicants to change their email address including the following fields:</p> <ul style="list-style-type: none"> <li>• New Email</li> <li>• Confirm Email</li> </ul>



#	<b>Functional Requirements – APPLICANT PROGRAM</b>
FR 19.	<p>The program will allow applicants to view their profile including the following fields:</p> <ul style="list-style-type: none"> <li>• First Name</li> <li>• Middle Initial</li> <li>• Last Name</li> <li>• Last 4 SSN</li> <li>• Date of Birth</li> <li>• Sex</li> <li>• Home Address <ul style="list-style-type: none"> <li>○ Street Address</li> <li>○ Suite</li> <li>○ City</li> <li>○ State</li> <li>○ Zip</li> </ul> </li> <li>• Mailing Address <ul style="list-style-type: none"> <li>○ Street Address</li> <li>○ Suite</li> <li>○ City</li> <li>○ State</li> <li>○ Zip</li> </ul> </li> <li>• Phone</li> <li>• Second Phone</li> <li>• Email Address</li> <li>• Veteran - Yes/No</li> <li>• Disabled - Yes/No</li> <li>• Annual Income</li> <li>• Ethnicity</li> <li>• Race</li> </ul>
FR 20.	<p>The program will allow applicants to view their family information including the following fields for all family members:</p> <ul style="list-style-type: none"> <li>• First Name</li> <li>• Last Name</li> <li>• Last 4 SSN</li> <li>• Birth Date</li> <li>• Sex</li> <li>• Disabled – Yes/No</li> <li>• Citizenship</li> </ul>
FR 21.	<p>The program will allow applicants to view their waiting list information, including the following fields:</p> <ul style="list-style-type: none"> <li>• Application Date</li> <li>• List</li> <li>• Status</li> <li>• Household Type</li> <li>• Status of Waiting List</li> </ul>



#	<b>Functional Requirements – APPLICANT PROGRAM</b>
FR 22.	<p>The program will allow applicants to view their communications with MSHDA, including the following fields:</p> <ul style="list-style-type: none"> <li>• Announcements <ul style="list-style-type: none"> <li>○ Create Date</li> <li>○ Title</li> </ul> </li> <li>• Forms <ul style="list-style-type: none"> <li>○ Description</li> <li>○ File Name</li> <li>○ Download</li> </ul> </li> <li>• Create Request <ul style="list-style-type: none"> <li>○ Request Type</li> </ul> </li> <li>• View Requests <ul style="list-style-type: none"> <li>○ Request Date</li> <li>○ Type</li> <li>○ Status</li> <li>○ Days Since Request</li> <li>○ Approved/Denied Date</li> </ul> </li> </ul>
FR 23.	<p>The program allows include fields for the applicant to request updates to their personal information. Fields included are:</p> <ul style="list-style-type: none"> <li>• HOH First Name</li> <li>• HOH Middle Name</li> <li>• HOH Last Name</li> <li>• Home Address <ul style="list-style-type: none"> <li>○ House Number</li> <li>○ Street Direction</li> <li>○ Street</li> <li>○ Street Type</li> <li>○ Unit</li> <li>○ City</li> <li>○ State</li> <li>○ Zip</li> </ul> </li> <li>• Mailing Address <ul style="list-style-type: none"> <li>○ House Number</li> <li>○ Street Direction</li> <li>○ Street</li> <li>○ Street Type</li> <li>○ Unit</li> <li>○ City</li> <li>○ State</li> <li>○ Zip</li> </ul> </li> <li>• Phone Number</li> <li>• Second Phone Number</li> <li>• Note</li> </ul>



#	<b>Functional Requirements – APPLICANT PROGRAM</b>
FR 24.	<p>The program allows include fields for the applicant to request the addition of a family member. Fields included are:</p> <ul style="list-style-type: none"> <li>• First Name</li> <li>• Last Name</li> <li>• SSN</li> <li>• Birth Date</li> <li>• Sex – Male/Female</li> <li>• Citizenship Drop Down <ul style="list-style-type: none"> <li>○ Eligible Citizen</li> <li>○ Eligible Non-Citizen</li> <li>○ Ineligible Non-Citizen</li> <li>○ Pending Verification</li> <li>○ Unknown/Unverified</li> </ul> </li> <li>• Primary Race Drop Down <ul style="list-style-type: none"> <li>○ American Indian/ Alaska Native</li> <li>○ Asian</li> <li>○ Black/African American</li> <li>○ Native Hawaiian/ Other Pacific Islander</li> <li>○ White</li> </ul> </li> <li>• Disabled – Yes/No</li> <li>• Ethnicity – Hispanic or Latino/ Not Hispanic or Latino</li> <li>• Relation Drop Down <ul style="list-style-type: none"> <li>○ Co-Head</li> <li>○ Foster Child/Foster Adult</li> <li>○ Full-Time Student 18+</li> <li>○ Head</li> <li>○ Live-In Aide</li> <li>○ Other Adult</li> <li>○ Other Youth Under 18</li> <li>○ Spouse</li> </ul> </li> <li>• Note</li> </ul>
FR 25.	<p>The program allows include fields for the applicant to request the removal of a family member. Fields included are:</p> <ul style="list-style-type: none"> <li>• Remove Family Member Drop Down</li> <li>• Note</li> </ul>
FR 26.	<p>The program allows include fields for the applicant to request an update to their SSN. Fields included are:</p> <ul style="list-style-type: none"> <li>• SSN</li> <li>• Note</li> </ul>
FR 27.	All fields in program will interface with Elite software



#	Functional Requirements – LANDLORD PROGRAM
FR 1.	The program supports a number of landlords up to 250,000.
FR 2.	The program will contain multi-level security including Landlord, Admin, and Housing Authority roles.
FR 3.	<p>The program will include an admin panel. The admin panel will include the menu items:</p> <ul style="list-style-type: none"> <li>• Users</li> <li>• User Landlords</li> <li>• Managing Agents</li> <li>• Approve Landlords</li> <li>• Account Status</li> <li>• HCV Landlords</li> <li>• Guest Landlords</li> <li>• Landlord Newsletter</li> <li>• Request Type</li> <li>• Reports</li> <li>• Settings</li> <li>• Emails</li> <li>• Welcome Messages</li> <li>• Login History Reports</li> </ul>
FR 4.	<p>From the admin panel, the Users menu item will include the following fields for all applicants:</p> <ul style="list-style-type: none"> <li>• User Name</li> <li>• Email</li> <li>• Create Date</li> <li>• Last Login Date</li> </ul> <p>Admin will be able to edit and/or delete users.</p>
FR 5.	<p>All data in table can be exported</p> <p>From the admin panel, the Emails menu item will include the following fields:</p> <ul style="list-style-type: none"> <li>• Email Name</li> <li>• Description</li> </ul>
FR 6.	<p>Admin can edit automated email messages pertaining to multiple landlord actions.</p> <p>From the admin panel, the Login History Reports menu item will include the following charts</p> <ul style="list-style-type: none"> <li>• Number of landlord logins. (historical)</li> <li>• Top 10 most logged in landlords. (historical)</li> </ul>
FR 7.	<p>All data in table can be exported</p> <p>From the admin panel, the Request Type menu item will include the following fields:</p> <ul style="list-style-type: none"> <li>• Type</li> <li>• Enabled</li> <li>• Notify Email</li> <li>• Require Applicant Notes</li> </ul> <p>Admin will have the ability to enable or disable landlord request types.</p>
FR 7.	Admin will be able to edit and limit the number of request allowed per request category.



#	<b>Functional Requirements – LANDLORD PROGRAM</b>
FR 8.	<p>From the admin panel, the Settings menu item will include the following options:</p> <ul style="list-style-type: none"> <li>• Create account <ul style="list-style-type: none"> <li>○ Enable/Disable – Allow landlord to create own account</li> <li>○ Enable/Disable – Landlord requires approval</li> <li>○ Email address to notify when landlord creates account text box</li> <li>○ Enable/Disable - CAPTCHA on applicant create account page</li> <li>○ Create account success message text box</li> <li>○ Create account applicant error message text box</li> <li>○ Create account requires approval success message text box</li> <li>○ Enable/Disable – Allow more than one account per entity record</li> <li>○ Only one allowed account per entity record error message text box</li> </ul> </li> <li>• Terms of Service <ul style="list-style-type: none"> <li>○ Enable/Disable – Show terms of service</li> <li>○ Terms of service message text box</li> <li>○ Enable/Disable – Require agreement to terms of service</li> </ul> </li> <li>• F.A.Q. <ul style="list-style-type: none"> <li>○ Enable/Disable – Show F.A.Q. link</li> <li>○ F.A.Q. Link text, text box</li> <li>○ F.A.Q. link color option</li> <li>○ F.A.Q. URL text box</li> </ul> </li> </ul>
FR 9.	<p>From the admin panel, the Settings menu item will include the following options:</p> <ul style="list-style-type: none"> <li>• Requests <ul style="list-style-type: none"> <li>○ Enable/Disable – Send notify email on landlord request</li> <li>○ Enable/Disable – Notify landlord on request processed</li> <li>○ Enable/Disable – Allow landlord to create requests</li> <li>○ Create request success message text box</li> <li>○ Max allowed requests reached error message text box</li> <li>○ Do not allow reschedule appointment and briefing requests that are within ____ hours</li> </ul> </li> <li>• Miscellaneous <ul style="list-style-type: none"> <li>○ Show export icons for drop down <ul style="list-style-type: none"> <li>▪ All</li> <li>▪ None</li> <li>▪ Admin Users</li> <li>▪ Admin and all HA Users</li> </ul> </li> <li>○ Enable/Disable – Split address fields</li> <li>○ Enable/Disable – Show welcome message</li> <li>○ Enable/Disable – Show forms</li> <li>○ Enable/Disable – Show contact us</li> <li>○ Enable/Disable – Show appointments menu</li> </ul> </li> </ul>
FR 9.	<ul style="list-style-type: none"> <li>○ Enable/Disable – Show annual Number of days of login history field</li> <li>○ Default phone mask text box</li> <li>○ Applicant portal URL text box</li> <li>○ Email from text box</li> <li>• Save button</li> <li>• Cancel button</li> </ul>
FR 10.	<p>The program will contain a Login Page. The Login Page will include at a minimum:</p> <ul style="list-style-type: none"> <li>• Welcome Message text field</li> <li>• Username field</li> <li>• Password field</li> <li>• Create account link</li> <li>• Forgot password link</li> <li>• Terms of service</li> </ul>



#	Functional Requirements – LANDLORD PROGRAM
FR 11.	<p>The program will contain a Create Account page that will include fields for:</p> <ul style="list-style-type: none"><li>• Add User<ul style="list-style-type: none"><li>○ User Name</li><li>○ Password</li><li>○ Confirm Password</li><li>○ Email</li></ul></li><li>• Landlord<ul style="list-style-type: none"><li>○ Business Name</li><li>○ Contact First Name</li><li>○ Contact Middle Name</li><li>○ Contact Last Name</li><li>○ Street</li><li>○ Suite</li><li>○ City</li><li>○ State</li><li>○ Zip</li><li>○ Phone</li><li>○ Extension</li><li>○ Entity ID</li><li>○ Last 4 of Tax ID</li><li>○ Encrypted Code</li></ul></li></ul>
FR 12.	<p>The program will allow landlords to change their password including the following fields:</p> <ul style="list-style-type: none"><li>• Old Password</li><li>• New Password</li><li>• Confirm Password</li></ul>
FR 13.	<p>The program will allow landlords to change their email address including the following fields:</p> <ul style="list-style-type: none"><li>• New Email</li><li>• Confirm Email</li></ul>



#	Functional Requirements – LANDLORD PROGRAM
FR 14.	<p>The program will allow landlords to view their assisted families including the following fields for each family.</p> <ul style="list-style-type: none"><li>• Last Name</li><li>• First Name</li><li>• Street</li><li>• Suite</li><li>• HAP Amount</li><li>• Re-Exam Date</li><li>• Move-In Date</li><li>• Lease End Date</li></ul> <p>All data in table can be exported</p> <p>Landlord will have ability to select a family to view further detail including the following fields:</p> <ul style="list-style-type: none"><li>• Family<ul style="list-style-type: none"><li>○ Last Name</li><li>○ First Name</li><li>○ HAP</li><li>○ Re-exam Date</li><li>○ Move-in Date</li><li>○ HOH Entity ID</li></ul></li><li>• Unit Address<ul style="list-style-type: none"><li>○ Street</li><li>○ Suite</li><li>○ City</li><li>○ State</li><li>○ Zip</li></ul></li><li>• Unit Characteristics<ul style="list-style-type: none"><li>○ Bedrooms</li><li>○ Sleeping Rooms</li><li>○ Full Bathrooms</li><li>○ Half Bathrooms</li></ul></li><li>• Family Members<ul style="list-style-type: none"><li>○ Last Name</li><li>○ First Name</li><li>○ Age</li><li>○ Relation</li></ul></li></ul>



#	<b>Functional Requirements – LANDLORD PROGRAM</b>
FR 15.	<p>The program will allow landlords to view their unit information including the following fields for all units:</p> <p>HCV Units (Active Leased Units)</p> <ul style="list-style-type: none"> <li>• Street</li> <li>• Suite</li> <li>• City</li> <li>• State</li> <li>• Zip</li> <li>• Currently Housing Family</li> <li>• Is Available</li> </ul> <p>Non - HCV Units (Inactive Units)</p> <ul style="list-style-type: none"> <li>• Street</li> <li>• Suite</li> <li>• City</li> <li>• State</li> <li>• Zip</li> <li>• Currently Housing Family</li> <li>• Is Available</li> </ul> <p>Landlord will have ability to select a unit to view further detail including the following fields:</p> <ul style="list-style-type: none"> <li>• Unit <ul style="list-style-type: none"> <li>○ Street</li> <li>○ Suite</li> <li>○ City</li> <li>○ State</li> <li>○ Zip</li> <li>○ Bedrooms</li> <li>○ Abated</li> <li>○ Abated Date</li> <li>○ Sleeping Rooms</li> <li>○ Full Bathrooms</li> <li>○ Half Bathrooms</li> <li>○ Contract Rent</li> </ul> </li> <li>• Most Recent Inspection <ul style="list-style-type: none"> <li>○ Date</li> <li>○ Type</li> <li>○ Result</li> <li>○ Inspector Name</li> <li>○ Notes</li> </ul> </li> </ul>



#	Functional Requirements – LANDLORD PROGRAM
FR 16.	<ul style="list-style-type: none"> <li>• Family               <ul style="list-style-type: none"> <li>○ Last Name</li> <li>○ First Name</li> <li>○ HAP</li> </ul> </li> <li>• Upcoming Inspections               <ul style="list-style-type: none"> <li>○ Date</li> <li>○ Type</li> <li>○ Inspector</li> </ul> </li> <li>• Past Inspections               <ul style="list-style-type: none"> <li>○ Date</li> <li>○ Type</li> <li>○ Inspector</li> <li>○ Results</li> <li>○ Note</li> </ul> </li> </ul> <p>All data in table can be exported.</p>
FR 17.	<p>The program will allow landlords to view their payment information, including the following fields:</p> <ul style="list-style-type: none"> <li>• Check/DD #</li> <li>• Unit</li> <li>• Resident</li> <li>• Amount</li> <li>• Description</li> <li>• Check Date</li> </ul> <p>Data will be sorted by check date and can be filtered by:</p> <ul style="list-style-type: none"> <li>• Check/DD #</li> <li>• Check Date Range</li> <li>• Unit</li> </ul> <p>All data in table can be exported.</p>
FR 18.	<p>The program will allow landlords to view their profile, including the following fields:</p> <ul style="list-style-type: none"> <li>• User Name</li> <li>• Name</li> <li>• Street</li> <li>• Suite</li> <li>• City State</li> <li>• Zip</li> <li>• Phone</li> <li>• Extension</li> <li>• E-mail</li> </ul>
FR 19.	<p>The program will allow landlords to view their payment holds and abatements, including the following fields:</p> <ul style="list-style-type: none"> <li>• Resident</li> <li>• Unit</li> <li>• Start Date</li> <li>• End Date</li> <li>• Status</li> <li>• Type</li> <li>• Reason</li> <li>• End Reason</li> </ul> <p>Data can be filtered by:</p> <ul style="list-style-type: none"> <li>• Unit</li> <li>• Status</li> <li>• Type</li> </ul> <p>All data in table can be exported.</p>



#	Functional Requirements – LANDLORD PROGRAM
FR 20.	<p>The program will allow landlords to view their communications with MSHDA, including the following fields:</p> <ul style="list-style-type: none"><li>• Announcements<ul style="list-style-type: none"><li>○ Create Date</li><li>○ Title</li></ul></li><li>• Forms<ul style="list-style-type: none"><li>○ Description</li><li>○ File Name</li><li>○ Download</li></ul></li><li>• Requests<ul style="list-style-type: none"><li>○ Request Date</li><li>○ Type</li><li>○ Status</li><li>○ Days Since Request</li></ul></li></ul>
FR 21.	<p>The program allows include fields for the landlord to request updates to their personal information. Fields included are:</p> <ul style="list-style-type: none"><li>• Request Type</li><li>• Street</li><li>• Suite</li><li>• City</li><li>• State</li><li>• Zip</li><li>• Phone</li><li>• Extension</li><li>• Note</li></ul>
FR 22.	<p>All fields in program will interface with Elite software</p>



**Attachment J – RESERVED**



## **Attachment K – Software Agreement**

### **EMPHASYS SOFTWARE AGREEMENT**

This Agreement is entered into on the date set forth below, by and between Emphasys Computer Solutions having its principal place of business in Petoskey, Michigan (hereinafter Emphasys); and Michigan State Housing Development Authority having its principal place of business at: 320 S Walnut; CASS Building 2<sup>nd</sup> floor, Lansing, MI 48933 (hereinafter Licensee).

#### **1. LICENSED SOFTWARE**

- 1.1. Emphasys grants to Licensee a nonexclusive, nontransferable, non-assignable license to use the software identified in Exhibit A ("Application Software") and Emphasys, as authorized agent, grants to Licensee a nonexclusive, nontransferable, non-assignable license to use the software described in Exhibit A ("Other Licensed Software"). The license is solely for Licensee's own use for its internal data processing operations and solely on the one computer system currently used by Licensee or purchased and delivered hereunder. Licensee agrees to abide by all terms and conditions as required by the manufacturers of the Other Licensed Software.

#### **2. PROPRIETARY INFORMATION & NON-DISCLOSURE**

- 2.1. Licensed Software, including source code and Support Services, and all documents related thereto, constitutes proprietary information and trade secrets to Emphasys or to the principals for whom Emphasys is the authorized agent. Title and full ownership, including any modifications or revisions thereto, shall at all times remain with Emphasys or its principal.
- 2.2. Licensee may not make copies of the Licensed Software except for backup, archival, emergency recovery purposes or to replace a worn copy. If this License Agreement is terminated, all such copies must be destroyed and the Licensed Software returned to Emphasys.
- 2.3. Licensee agrees that it will not allow others to reverse engineer, disassemble, de-compile or in any way tamper with the Licensed Software.
- 2.4. Licensee shall take all reasonable steps to ensure that all Licensed Software, in whatever form, and all documents relating thereto, are held in confidence by Licensee, its employees and consultants and are not disclosed or made available to any third party not licensed by Emphasys, without the prior written consent of Emphasys. Licensee shall instruct in writing all parties having access to the Software of their obligations under this Article.
- 2.5. In the event of Licensee's breach of this Article, as determined by Emphasys, Emphasys shall have the right to enjoin Licensee from further breach and

obtain such relief as may be determined by a court of competent jurisdiction.

#### **3. PAYMENT TERMS**

- 3.1. Licensee agrees to pay Emphasys the price of the Application Software by paying a deposit of twenty-five percent of the license fees at the time of execution of this Agreement and the balance of the license fees upon initial installation of the Application Software.
- 3.2. Licensee agrees to pay Emphasys the price of the Other Licensed Software by paying a deposit of eighty-five percent of the price at the time of execution of this Agreement and the balance upon initial installation of the Other Licensed Software.
- 3.3. Licensee agrees to pay Emphasys the price of the Equipment, if any, identified in Exhibit A, by paying eighty-five percent of the price of the Equipment at the time of execution of this Agreement and the balance of the price upon initial installation of the Equipment.
- 3.4. Licensee agrees to pay 100% of the amounts listed in this Agreement for Services upon delivery of such Services by Emphasys.
- 3.5. Licensee agrees to pay for Software Standard Support each year, in advance, prior to the anniversary of the initial due date, which shall be effective the first of the month following the date of the initial installation of the Application Software ("Effective Date").
- 3.6. All amounts are due and payable within thirty calendar days of Emphasys' invoice, and all amounts shall be in US dollars unless otherwise noted.
- 3.7. Emphasys shall have the right to withhold services and be held harmless in the event scheduled payments due hereunder remain outstanding for a period longer than thirty days from the due date. Emphasys shall also have the right to charge a reinstatement or collection fee equal to 10% of any amount unpaid and overdue for this period of time. In addition, Licensee shall be responsible for paying for any third party collection or legal costs incurred by Emphasys as a result of additional collection efforts. Finally, Emphasys reserves the right to cancel Licensee's license for Application Software, after written notice of 30 days, for any material breach by Licensee or if any charges called for herein, which are not reasonably disputable and are in excess of \$10,000, remain unpaid for a period of one hundred twenty (120) days beyond the due date. Cancellation for any reason shall not affect the sums due hereunder or any additional remedies provided by law or equity.



- 3.8. In addition to any penalties that may be charged, Emphasys reserves the right to assess and licensee agrees to pay a service charge of one and one-half percent (1.5%) per month or partial month on all past due invoices.
- 3.9. In addition to the amounts listed for Services, Licensee agrees to pay for reasonable expenses incurred by Emphasys to fulfill its obligations to Licensee, including travel expenses such as lodging, food, airfare, ground transportation, mileage and airport parking during the term of this Agreement.
- 3.10. Any sales-related taxes, whether specifically identified in this Agreement or not, which are imposed currently or in the future, by any authority with the power of taxation in connection with this Agreement, shall be paid by Licensee. If Licensee is exempt from taxation, Licensee shall provide Emphasys with a Certificate of Exemption upon request.

#### **4. WARRANTY**

- 4.1. Emphasys warrants that it is the owner of the Application Software and Documentation and that Emphasys has the right to sublicense such Application Software or Other Licensed Software, as applicable. Emphasys further warrants that no portion of the Application Software or Documentation infringes on the intellectual property rights of any third party. Emphasys will indemnify and hold harmless Licensee, its affiliates and each of their respective officers, directors, affiliates, owners, employees and agents ("Indemnitee") from any loss, liability, damage, or expense, including, but not limited to, costs of defense resulting from any claims, demands, or actions brought against Indemnitee based on a claim or allegation that the Application Software or Documentation infringes or misappropriates a patent, copyright, trade secret, information, or any other rights of any third party. Emphasys shall have the right to direct the defense strategy and to select their legal representation. The affected Indemnitee, however, shall give Emphasys prompt written notice of any such claim and shall cooperate in the defense of such claims, demands or actions.
- 4.2. Emphasys warrants that the Software will be free from defects in material and workmanship and shall substantially comply with Emphasys' then current documentation. The warranty period of thirty (30) days commences immediately following initial Software installation.
- 4.3. These warranties will only be valid when the Software is used by Licensee in an appropriate and reasonable manner consistent with normal usage and management of such Software. The exclusive remedy of Licensee for breach of these warranties is that Emphasys shall be required to correct, repair, adjust or modify the Software if such defect in material or workmanship occurs and is reported by Licensee in writing within the appropriate warranty period. Emphasys shall not be responsible or liable for damage to the Software caused by Licensee, acts of God, the tampering with or modification of the Software by anyone other than Emphasys' authorized personnel, or damage to the Software occurring by virtue of electrical malfunctions or external factors over which Emphasys has no control.
- 4.4. These warranties do not extend to any Software to which repairs or modifications have been performed by Licensee or persons not authorized by Emphasys, unless such repairs were performed with the prior written consent of Emphasys.
- 4.5. Emphasys warrants that all Services provided pursuant to this Agreement will be performed in a workmanlike manner in accordance with reasonable commercial standards. This warranty shall extend for thirty days following completion of the particular Service, and Emphasys shall correct all Services not so performed if brought to Emphasys' attention in writing within the warranty period.
- 4.6. Emphasys provides no warranties for hardware Equipment and related system software beyond that provided by the manufacturer.
- 4.7. THE WARRANTIES PROVIDED IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE FACE HEREOF, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

#### **5. LIMITATION OF LIABILITY**

- 5.1. Emphasys shall not be liable to Licensee or any other person for any claim or damages arising directly or indirectly from the furnishing of Equipment, Software, Services, or any documentation relating to such Equipment, Software or Services provided hereunder or from any other cause, except for claims arising from the negligence or willful misconduct of Emphasys or Emphasys' employees, agents or subcontractors. Liability of Emphasys for negligence shall in no event exceed the total price of the item of Equipment, Software Module, or particular Service that is the subject of the claim. Except for acts of willful misconduct, in no event shall Emphasys be liable to Licensee or any third party for indirect, incidental, special, consequential, or exemplary damages of any kind



arising out of the existence, furnishing, functioning or the use of the Equipment, Software or Services provided hereunder, even if Emphasys has been advised of the possibility of such damages.

## 6. AGREEMENT

6.1. The Agreement between Licensee and Emphasys consists of the following documents and all attachments thereto, which are hereby incorporated by reference. If there is any conflict between the documents, the following order of precedence shall govern:

6.1.1. The contents herein, as may be modified in accordance with Article 9.5, including all Exhibits.

6.1.2. Emphasys' proposal dated 05/25/2012, and hereinafter referred to as the Proposal.

## 7. SUPPORT

7.1. Emphasys shall provide Support commencing on the Effective Date. During the first year of this Agreement, the cost of Standard Support will be \$22,000 year 1 (excluding hosting). This Agreement shall automatically renew for additional terms of one (1) year each unless either party provides the other with written notice of termination at least sixty (60) days prior to the expiration date of the initial term or of any subsequent one-year term.

7.2. Emphasys shall be entitled to increase its fees for Standard Support upon sixty (60) days prior written notice to Licensee.

7.3. Emphasys agrees to provide Standard Support, as defined in this Agreement, for the Application Software licensed to Licensee. Emphasys agrees to provide Standard Support to enable the Application Software to perform substantially without interruption and error, and in Substantial Compliance with the then current Documentation and the then current Mandated Changes.

7.4. Emphasys is to provide support to Licensee for technical issues arising from the Application Software malfunctioning relative to the functionality described in the Documentation. Any additional services to support Licensee are outside the scope of this Agreement.

7.5. "Software for Life": Licensee shall be entitled to Upgrades without having to repurchase Emphasys proprietary software licenses. Once Licensee owns a license to an Emphasys proprietary Software Module, Licensee shall be entitled to any substantially equivalent future Upgrades of that originally licensed module at no additional license fee, provided that all related Standard Support fees have been paid since the original licensing of that module. Licensee is responsible for purchasing any

third party required product (hardware or software) and Services required to properly implement the Upgrade.

7.6. Audits: During the term of this Agreement and for three (3) years after termination or expiration, Licensee will maintain complete records regarding its housing unit counts, software modules installed or purchased, or any other measure upon which Standard Support fees are based. Upon reasonable notice to Licensee, Emphasys may audit, at Emphasys' expense, Licensee's unit counts, software modules installed, and other relevant measures and supporting records to determine its compliance hereunder.

7.7. Standard Support means the following services shall be provided by Emphasys to Licensee at no additional cost to Licensee:

7.7.1. Technical troubleshooting and assistance with Application Software in order to restore the Application Software's functionality to its operational condition prior to any known errors and to comply with related published Documentation, the current published software manuals and Mandated Changes.

7.7.2. Corrections of errors, interruptions, malfunctions or defects in the Application Software to enable the Application Software to substantially conform to published Documentation.

7.7.3. Assistance with errors caused by routine Software Fixes or Enhancements that are correctly installed, as directed in writing by Emphasys.

## 8. RESPONSIBILITIES OF LICENSEE

8.1. Request for Service. At any time, Licensee may report its request for service and its priority code by fax using Emphasys' dedicated support fax (231.348.8462), phone number 800.349.0575 or e-mail (support@emphasysworld.com). If Licensee believes that the Support Event is a Priority 1, Licensee shall make every reasonable effort to determine if the event is hardware or software-related prior to requesting support from Emphasys.

8.2. Standard Required Information. When contacting Emphasys for Standard Support, Licensee shall provide the following information: Licensee name, phone and contact person, the name of the Application Software module (e.g., General Ledger, Low Income, Section 8, etc.), the menu item that was selected and the exact difficulty that was experienced. Licensee understands and agrees that its full cooperation and assistance are necessary for Emphasys to properly respond to a request for service. Licensee is responsible for notifying



Emphasys of any Application Software problems and providing written documentation of Application Software problems with specific examples.

- 8.3. **Install Latest Third Party Software.** Licensee agrees to install in their live environment the latest released version of Third Party Software that is used by and compatible with the Application Software within two (2) years of general release by said third party. During such two (2) year period, Emphasys shall use its Best Efforts to continue to support the Application Software using Licensee's version of the Third Party Software. In the event a Third Party Software product or version thereof is discontinued, phased-out or no longer supported by its owner, Emphasys' obligation to support that Software shall cease.
- 8.4. **Install Latest Application Software.** Licensee agrees to install the latest released Upgrade of the Application Software in their live environment within 6 (six) months of release by Emphasys.
- 8.5. **Reasonable Access.** Licensee agrees to provide those Emphasys personnel involved with the operation and support of the Application Software reasonable access to perform activities necessary to fulfill its obligations under this Agreement. Licensee will provide Emphasys with predefined passwords that will not change without the prior approval of Licensee. Licensee agrees to provide Emphasys appropriate access to Licensee's computer system during normal business hours via Emphasys-approved telephone modem and modem software. Licensee will also provide its own Internet access and connection. Such provision shall be operable prior to initial software installation and shall remain operable for the duration of Emphasys' obligation to Licensee for software support services.
- 8.6. **Data for Support.** Licensee will make available to Emphasys, on a reasonable basis, data necessary for the successful support of the Application Software, including all currently existing critical files. All such data shall be considered to be Licensee's Proprietary Information, and Emphasys shall retain same in strict confidence and shall not use or disclose such Proprietary Information except to the extent necessary to perform services hereunder.
- 8.7. **Backups.** Licensee shall create and keep current backups, not older than two (2) working days, of all Application Software and related data files. Licensee further agrees to make backups available for restoration purposes if needed by Emphasys. Any backup services provided by Emphasys shall result in billable time to Licensee.
- 8.8. **Modifications by Licensee.** In no event shall Emphasys be liable or responsible for correcting any

errors or damage resulting from changes or modifications to the Application Software made by Licensee.

- 8.9. **Designated Licensee Contact.** It is the intent that only Licensee designated contacts or, in their absence, their assignees initiate support calls to Emphasys.

#### 9. GENERAL

- 9.1. **Site Location:** The Equipment and Software shall be located at the following address: 320 S Walnut, CASS Building 2<sup>nd</sup> floor, Lansing, MI 48933.
- 9.2. **Export:** The Equipment and Licensed Software furnished by Emphasys herein and any direct products thereof are presently considered licensable commodities and are regulated by the U.S. Department of Commerce. In order to either export said commodities from the United States or to re-export same from any country, a valid license from the U.S. Department of Commerce is required. Diversion contrary to United States Law is prohibited.
- 9.3. **Assignment:** The rights under this Agreement shall not be assigned by Licensee without the written consent of Emphasys.
- 9.4. **Complete Agreement:** This Agreement, including all Exhibits, constitutes the entire agreement between the parties and supersedes all prior or contemporaneous understandings or agreements, whether written or oral, regarding the subject matter hereof.
- 9.5. **Modification:** This Agreement may not be modified, except by an instrument in writing signed by a duly authorized representative of each party.
- 9.6. **Severability:** If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.
- 9.7. **Waivers:** Any waivers by either party of a breach of any provision to this Agreement shall not operate as, or be construed as, a waiver of any other provision of this Agreement. The failure of a party to insist upon strict adherence to any term of this Agreement on one or more occasions shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.
- 9.8. **Arbitration:** All disputes, with the exception of the injunctive and other relief referred to in Article 2.5, above, arising out of or relating to this Agreement or a material breach thereof, will be submitted to binding arbitration in accordance with the Commercial Arbitration Rules of the American



Arbitration Association, as supplemented by the Computer Guide, if then in existence. Judgment upon the award rendered by the arbitrator may be entered in any Court having jurisdiction thereof. The parties shall jointly request the American Arbitration Association to submit a panel of three arbitrators, each of which is listed on the Computer Arbitration Panel and at least one of which shall be an attorney in good standing.

- 9.9. Force Majeure: In the event of any cause beyond the control of either party, such party shall not be liable for any delay in the performance of, or failure to perform, this Agreement. Without limiting the generality of the foregoing, such causes include acts of God or the public enemy, fires, floods, storms, earthquakes, riots, strikes, lockouts, quarantines, wars or war operations or other causes which could not, with reasonable diligence, be controlled or prevented by the party affected.

- 9.10. Notices: All notices, requests, demands or other communications required or permitted to be given

hereunder shall be in writing and shall be deemed to have been duly given when mailed by certified mail or when delivered in person to the parties who have executed this Agreement.

- 9.11. Jurisdiction: The parties agree that this Agreement will be entered into in the State of Michigan, that both parties are subject to the jurisdiction of the state and federal courts in Michigan, and that such courts shall have exclusive jurisdiction over any case or controversy arising out of, or in any way relating to, this Agreement or to the relationship created hereunder. The parties further agree that the laws of the State of Michigan and of the United States shall govern the construction and interpretation of this Agreement and shall apply in any such case or controversy.

- 9.12. Headings: The paragraph headings used herein are for convenience of reference only and shall in no way be deemed to define, limit or add to any of the provisions hereof.

IN WITNESS WHEREOF the parties hereunto have caused this Agreement to be executed by their duly authorized representatives this      day of      2012.

Emphasys Software

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Michigan State Housing Development Authority

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## Exhibit A: Licensed Modules

Licensee Name:

### Application Software:

Name

APP - Applicant Portal  
PP - Partner Portal

### Other Licensed Software:

Name

### Hardware:

Description



Exhibit B: Cost Proposal

Dated



Exhibit C: Contract Exception Items

None.